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AMERICAN BILATERAL AIR TRANSPORT AGREEMENTS ON THE THRESHOLD OF THE JET TRANSPORT AGE

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INTRODUCTION AND SUMMARY

FOR over twelve years America's civil air transport relations with foreign countries have been conducted according to the principles of the Bermuda Agreement. This agreement, a compromise between British restrictionist policies and American liberal policies, provides standard terms for the exchange of international air transport rights. Today many governments feel that they were too generous to the United States when they made those agreements. They now seek to protect their own national airlines by stretching the liberal Bermuda principles to suit their purposes or by asking for amendment or renegotiation. At the same time our own air industry feels that their foreign competition has done too well in gaining a large share of America's international air market under the Bermuda-type agreement.

Among the problems to be solved are: equitable exchange of routes including beyond rights, definition of the Five Freedoms and agreement on statistics to be used to identify traffic as to Freedom, capacity and frequency control, multiple designation of airlines, changes of aircraft, and competitive fares. All of these problems have been with us for some time and all of them are being accentuated by the introduction of the jet transports.

Solutions are hard to find and are not likely to be clear-cut. At any rate a constant study of civil air policy is necessary with particular attention to the Bermuda principles as a suitable basis for exchange of rights in the jet age.

BACKGROUND

Pre-World War II Arrangements

Before World War II America's foreign air relations were simplified by the fact that there was only one important American international airline which operated as a chosen instrument. Pan American Airways, later called Pan American World Airways, made its own agreements with foreign governments wherever possible. Pan American began its international operations in 1927 (Key West-Havana) and together with its associate company,

[1] As the author holds an official position, it should be noted that the views expressed in this article are his personal views. Their expression does not in any way imply the concurrence of the United States Government.

Pan American-Grace Airways (Panagra), shared international air transport in the Western Hemisphere only with some of the European airlines. Arrangements were made with local governments who were anxious to have the transport service provided by Pan American. As they had no national carriers of their own capable of conducting international operations, they did not fear competition. In exchange for such rights Pan American, in many countries, participated in the establishment and development of local airlines.

Pan American's relations with a number of countries were made easier by the fact that the United States Senate on February 20, 1931 approved the Havana Convention on Commercial Aviation which had been signed on February 20, 1928. Other ratifying countries were Guatemala, Mexico, Nicaragua, Panama, the Dominican Republic, Costa Rica, Haiti, Honduras, Chile, and Ecuador. The Convention contained articles covering the taking-on and discharging of passengers and cargo (Article XXI) and the reservation of cabotage (Article XXII).[2] In addition, the United States had concluded a civil air agreement with Colombia effective January 23, 1929.

In the Pacific area Pan American was able to operate to Manila without benefit of foreign authorization by hopping between American-controlled islands. Introduction of Trans-Atlantic service, however, necessitated obtaining from the European governments the necessary operating rights. Great Britain had long had an active international air transport operation, primarily between London and Paris, and was therefore aware of the value of such rights. Pan American Airways and the British company, Imperial Airways, had negotiated with Portugal for landing rights at Lisbon and Horta in the Azores. The United States and the United Kingdom then negotiated through diplomatic channels to arrange for reciprocal landing rights in England, Bermuda, Newfoundland, and the United States. Other negotiations were conducted for landing rights in Canada, Eire, and France. In 1939 Pan American began trans-Atlantic service to Southhampton.

Internationalization

France in 1932 proposed to the League of Nations Conference for the Reduction and Limitation of Armaments, held at Geneva, complete internationalization of civil air transport under a regime to be organized by the League. This proposal, which included an international air police force, aroused considerable interest but never got beyond the discussion stage.

Other proposals for the internationalization of air transportation were raised at the Chicago Conference in 1944. Representatives of New Zealand and Australia proposed that a single international corporation should be formed in which every nation would participate. The British made another proposal to the effect that an international board should be established to control and promote world air transportation in much the same way as the Civil Aeronautics Board performed these tasks in the United States. International carriers would be granted licenses based on an economic showing of international convenience and necessity. Some of the powers proposed for this board went beyond those available to the Civil Aeronautics Board such as regulation of the number of flights to be made by each company and of the percentage of traffic which each country's airline would carry, as well as allocation of certain routes to specific countries to the exclusion of all others.

Since the end of the Chicago Conference there has been little interest in internationalization of civil aviation and, in fact, the industry has become more and more national as it has developed since the end of World War II. One successful "international" operation, organized on a regional basis, has been that of the Scandinavian Air System, a consortium of the three national

[2] Brown, Pan American Cooperation in Aeronautics, IX, J. Air Law, 494 (1938).

Scandinavian airlines for the conduct of their long-range international operations.

Chicago-type Agreements

During World War II, in a memorandum issued by the Civil Aeronautics Board dated December 2, 1943, the Department of State and the Civil Aeronautics Board formally announced that the United States would follow a bilateral approach in obtaining landing rights for our airlines abroad. This meant that the Department of State would conduct negotiations with foreign governments for such rights in a manner determined to be desirable by close coordination between the Civil Aeronautics Board and the Department. This statement was necessary so that it would be clear to the airlines and to foreign governments that in the future the so-called unilateral arrangements made between Pan American Airways and foreign governments would not be used as a basis for new international air relationships. Actually the Board had been in favor of government-to-government arrangements almost since its inception.[3]

The discussion of a legal framework for international aviation which would be required following the war engendered interest in some form of a multilateral agreement governing international air transportation. As a minimum it was realized that a post-war international organization was needed to set up air navigation standards and practices, as well as to deal with the economic problems involved.

The United States invited most of the nations of the world to attend an international conference on civil aviation at Chicago late in 1944. Fifty-four nations attended. Argentina was not invited as it did not fall into any of the categories of countries to which invitations were sent; members of the United Nations and nations associated with the United Nations in World War II, European and Asiatic neutral nations, and the Danish and Thai Ministers in Washington in their personal capacities. The USSR did not respond to its invitation. Other major countries which did not participate were either enemy or enemy-occupied countries.

The United States went to Chicago with a liberal approach in mind aimed at free competition on rates and services. The United Kingdom held out for strict government control of rates and apportionment of routes and regulation of frequency and capacity.

The Chicago Conference produced:

1. *The Convention on International Civil Aviation* ("The Chicago Convention"). This Convention established the International Civil Aviation Organization. By June 26, 1945 enough countries had signed the interim agreement to set up the Provisional International Civil Aviation Organization (PICAO) with offices in Montreal, Canada. On April 4, 1947 this was converted into the permanent International Civil Aviation Organization (ICAO). This organization continues to function and to perform a useful service in the more technical aspects of international aviation.

2. *The International Air Services Transit Agreement* ("The Two Freedoms Agreement"). By this agreement the signatories permit aircraft of other signatories to fly over their territory and land for non-commercial purposes.

3. *The International Air Transport Agreement* ("The Five Freedoms Agreement"). This agreement described the Five Freedoms and was to serve as a multilateral agreement to regulate the economic problems of international air transport.

4. *The Standard Form of Agreement for Provisional Air Routes* (Chi-

[3] Gates, International Control of Aviation in Time of Peace, 10 J.A.L.C. 441 (1939).

cago Standard Form). This form served as a model for bilateral transport agreements until more permanent arrangements could be made.

5. *Miscellaneous Matters and Proposals.* Various subjects of a technical, economic and legal nature, not otherwise dealt with, were incorporated in resolutions urging that international action be taken. Eventually action was taken on most of these.

Of the above, the Chicago Convention and the "Two Freedoms Agreement" were accepted by most of the major air powers of the world and many of the smaller countries as well. However, the "Five Freedoms Agreement" was not ratified by Great Britain and encountered considerable criticism in the United States. On July 25, 1946 it was denounced by the Department of State primarily because Great Britain had not ratified the agreement and a number of other countries had withdrawn. On the same day the Senate approved the Convention on International Civil Aviation.

Since that time the United States has depended upon bilateral air agreements to obtain its civil air rights abroad. Nevertheless, as late as 1954 the Air Coordinating Committee in its review of national aviation policy stated that the ultimate objective of the United States "has been and continues to be the achievement of a multilateral air transport agreement."[4] However, it seems difficult to conceive of a multilateral air transport agreement which would be acceptable to American interests in the foreseeable future.

Bermuda-type Agreements

On February 11, 1946, at Bermuda, the United States and the United Kingdom signed an air services agreement which has become known as the Bermuda Agreement. Such an agreement was necessary between the two leading civil aviation powers of the world because of the difference in their approaches to the problem of the exchange of commercial air rights which had become evident at Chicago. The agreement constituted a compromise between the liberal American and the restrictive British concepts. For example the United States made certain concessions towards control of rates and the United Kingdom made concessions on the treatment of capacity and frequency. On September 19, 1946 the United States and the United Kingdom in a joint statement proclaimed it as the standard pattern for all agreements to be concluded by them.

Eleven similar agreements were concluded by the United States with other countries in 1946 and sixteen more in 1947. To date, in all, over fifty such agreements have been concluded by the United States. In general these agreements have functioned well and have no doubt contributed to the vast expansion of international air transport which has taken place since the end of World War II.

The Bermuda principles approach international air transportation from a basically liberal point of view. Nevertheless they provide certain safeguards for those countries which fear their more powerful competitors and would prefer to exercise considerable control over the operation of foreign airlines serving their countries.

As restated in the Air Coordinating Committee's 1954 report on *Civil Air Policy*,[5] the United States regards the exchange of all Five Freedoms as essential to the economic operation of international air transport routes and to the fullest development of air transport services in the interests of the traveling public. Therefore the Bermuda Agreement and all subsequent agreements negotiated by the United States have been based on the exchange of all the Five Freedoms.[6]

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[4] Report of the Air Coordinating Committee on Civil Air Policy, p. 35 (1954).

[5] *Ibid.*

[6] First Freedom: The right to fly across the territory of a foreign country without landing.

On the important question of capacity, again paraphrasing *Civil Air Policy*, the Bermuda Agreement contains broad principles providing standards for relating capacity to traffic needs, taking into consideration the public requirements for air service and the requirements of both trunk-line operations and local or regional operations. Included are certain provisions designed as safeguards for the airlines of both contracting parties, such as the declaration that capacity shall bear a close relationship to traffic demands, that the airlines of both countries shall have a fair and equal opportunity to operate the routes for which they are designated, and that the airlines of one country shall take into consideration the interests of the airlines of the other country so as not to affect unduly the other's services.

All bilateral air agreements concluded by the United States have been executive agreements rather than treaties. This has greatly facilitated both the conclusion and amendment of air agreements. The advantages of using executive agreements rather than the more cumbersome treaty procedure were particularly evident immediately following World War II. As Lissitzyn has said:

> "American air carriers . . . had incomparable opportunities for entrenching themselves in international air transportation. These opportunities could be fully utilized only through obtaining commercial operating rights in a large number of countries on a reciprocal basis. The multilateral air transport agreement sponsored by the United States at the Chicago conference had a cool reception and would not have sufficed to open the skies of the world to United States airlines. The bilateral air transport agreements, on the other hand, negotiated while the United States was in a superb bargaining position, have opened to American flag air carriers a majority of the European nations, as well as most of the desirable routes elsewhere. This could not have been achieved through the slow process of treaty making."[7]

The Present Status

Having briefly traced the background of the agreements used by the United States to obtain international air transport rights for its carriers, we arrive at the beginning of 1959. Our air transport relations are encompassed in a set of over fifty agreements, most of which are of the Bermuda type, which remains the basis for United States negotiating policy in the international aviation field. Turbojet transports, offering an improvement of some fifty percent in both speed and capacity over their nearest piston-engine predecessors, have begun to fly the most important international air routes, and the time seems to have come for an appraisal of the present situation to determine if technological and economic advances have outstripped the political relationships which permit international air transport to operate.

The Basis for Our Bilateral Air Agreements

Before the passage of the Civil Aeronautics Act of June 23, 1938, Section 6(C) of the Air Commerce Act of 1926[8] was relied upon as authority for entering into such agreements as that with the United Kingdom, Ireland, and Canada. The 1938 Act transferred from the Secretary of Commerce to the newly created Civil Aeronautics Authority (later Board) the power to authorize the navigation in the United States of foreign non-military

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Second Freedom: The right to land for non-traffic purposes.

Third Freedom: The right to set down in a foreign country traffic coming from United States territory.

Fourth Freedom: The right to pick up in a foreign country traffic destined for the United States.

Fifth Freedom: The right to carry traffic from a point of origin in one foreign country to a point of destination in another foreign country.

[7] Lissitzyn, The Legal Status of Executive Agreements on Air Transportation, 17 J.A.L.C. 436 (1950).

[8] Now Section 1108(b), Federal Aviation Act of 1958.

aircraft. Section 402 of Title IV (The Economic Regulation of Air Transportation) stated that a foreign air carrier was forbidden to engage in foreign air transportation to and from the United States without a permit issued by the Civil Aeronautics Board. The Board "is empowered to issue such a permit if it finds that such carrier is fit, willing and able properly to perform such air transportation and to conform with the provisions of this Act and the rules, regulations and requirements of the Board hereunder and that such transportation will be in the public interest."

The Federal Aviation Act of 1958 repealed the Air Commerce Act of 1926 and the Civil Aeronautics Act of 1938. Most sections and sub-sections of the 1938 Act with which we are concerned have retained the same numerical identification in the 1958 Act. References to sections of "the Act" in the following discussion will refer to the Federal Aviation Act of 1958 but, unless otherwise indicated, will apply equally to the Civil Aeronautics Act of 1938.

Under Section 801 of the Act, the issuance and denial of foreign air carrier permits are subject to the approval of the President. Orders of the Board which are accordingly subject to approval of the President are, by Section 1006 (a) exempted from judicial review. Section 802 directs the Secretary of State to advise the Board of, and consult with the Board concerning, the negotiation of any agreements with foreign governments for the establishment or development of air navigation, including air routes and services. Section 1102 directs the Board to, among other things, exercise and perform its powers and duties under the Act "consistently with any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between the United States and any foreign country or foreign countries."

In practice the procedure may develop as follows: A United States air carrier may apply to the Board for a certificate of public convenience and necessity to provide service to a given foreign country. "The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied."[9]

The Board may then request the Secretary of State to undertake negotiations with the foreign country concerned to permit such services. The terms of such an agreement sought are made as broad as possible to permit service by other airlines which subsequently may be certificated by the Board, or to include routes which may appear to be desirable at some time in the future. The appropriate offices of the Department of State and the Civil Aeronautics Board then enter into close informal coordination to establish exactly what is desired in the way of rights and what rights it may be possible to offer to the foreign country in exchange.

The Board simultaneously consults not only with the carriers certificated for that route but also with other carriers who may be affected by such service or who may have an interest in that service or in providing a similar service. In due course the Department of State sends instructions to its diplomatic mission in the foreign country concerned or consults with the diplomatic mission of that country in Washington, probably proposing the conclusion of an air transport agreement on the basis of the standard form air transport agreement based on the Bermuda Agreement. If the foreign government agrees in principle, a delegation of that government may come to Washington or a United States delegation may go to the foreign capital for formal negotiations. A United States delegation is normally made up

[9] *Ibid.*, § 401(d)(1).

of one or more members of the Civil Aeronautics Board, members of the Board staff, and officials of the Department of State, as well as observers representing the Air Transport Association of America.

If agreement is reached on conclusion of a Bermuda type agreement, possibly modified to suit local conditions, and if agreement can also be reached on a schedule of routes to be appended to that agreement, approval for conclusion of the agreement is then obtained from the Secretary of State or an official designated by him. Close coordination with the Board and with the industry continues at every step of the process. When signed the agreement is published as part of the Treaties and Other International Acts Series.

Once the agreement is in force, the Board requests the Department of State to advise the foreign government of the airline or airlines designated by the United States Government to serve the route or routes in the schedule appended to the agreement. The foreign government then issues a foreign air carrier permit or an equivalent authorization for the United States airline or airlines to begin service. Likewise the foreign government may similarly designate an airline or airlines to operate its routes under the agreement. The foreign airline concerned then makes application to the Board for a foreign air carrier permit. "The Board is empowered to issue a permit if it finds that such carrier is fit, willing, and able properly to perform such air transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such transportation will be in the public interest."[10]

Other Forms of Intergovernmental Authorization

The above discussion on regulation of international air transportation by bilateral agreement does not mean that international air transportation is not possible between two countries not having such an agreement. For example the United States does not have air agreements with the Central American republics or Argentina and yet all of these countries are served by one or more United States airlines and their airlines operate to the United States on the basis of permits issued by the respective governments. The United States nevertheless prefers to have air agreements to provide a mutually acceptable framework for international air transport.

The Board may also grant authority for charter-type operations to airlines belonging to countries with which we do not have bilateral agreements or to airlines, belonging to countries with which we do have such agreements, but not designated by their governments to serve routes under the agreements. This latter authority is granted by the Board, on a reciprocal basis, under Section 1108(b) of the Federal Aviation Act of 1958, formerly Section 6(b) of the Air Commerce Act of 1926. The pertinent portions of that Section read as follows:

> "Foreign aircraft, which are not a part of the armed forces of a foreign nation, may be navigated in the United States by airmen holding certificates or licenses issued or rendered valid by the United States or by the nation in which the aircraft is registered if such foreign nation grants a similar privilege with respect to aircraft of the United States and only if such navigation is authorized by permit, order, or regulation issued by the Board hereunder, and in accordance with the terms, conditions, and limitation thereof. The Board shall issue such permits, orders or regulations to such extent only as the Board shall find such action to be in the interests of the public: *Provided, however,* That in exercising its powers hereunder, the Board shall do so consistently with any treaty, convention, or agreement which may be in force between the United States and any foreign country or countries. . . ."

In addition to civil air transport relations with the more than fifty coun-

[10] *Ibid.*, § 402(b).

tries which are covered by bilateral air agreements, reciprocal arrangements cover scheduled air transport services with about six additional countries.

This also means that the denunciation of an air agreement, such as that made by France in July 1958, does not necessarily halt air transportation between the two countries after the denunciation period (usually one year) has expired. Both countries may agree to allow their carriers to continue operating in accordance with the terms of the denounced agreement or each country may simply issue operating permits to the airlines of the other country.

Present Problems

There are a number of problems in international air transport relations which have been with us for some time. Such problems largely arise from the fact that many countries, which at the end of World War II could not conduct long-range international operations, are now in a position to do so. In many cases small countries with a long maritime tradition have projected that tradition into the air age and are conducting far-flung operations in air transportation which have little or no relationship to the size of their countries, their populations, or their economies. In addition it has become a point of national honor for almost every independent country to show its flag in the air as widely as possible. Some of these countries have discovered that this may be an expensive proposition, perhaps more expensive than they can afford. Nevertheless they have the right and the desire and they present a problem which must be considered.

Furthermore, standards now being applied are under strong attack from abroad as the following French comment will attest:

> "We are, therefore, brought to the conclusion that standards now employed to evaluate the advantages to either party of a bilateral agreement are of somewhat uncertain value and on the whole unconvincing. How could it be otherwise, in the absence of any agreement as to the basis on which to proceed? Neither statistical methods, basic views on the freedoms of the air, nor operating practices correspond to any common standard, so that any attempt to make comparisons amounts almost inevitably to talking at cross purposes, while the results achieved by negotiation are the expression of compromises which are increasingly hard to achieve and precarious to maintain."[11]

Routes

As World War II ended the United States knew that it would require vastly expanded air rights abroad after the war. In June 1944 the Civil Aeronautics Board, in consultation with the Departments of State, War, and Navy, announced the United States international air route pattern which it believed would be essential after the war.[12]

In the Atlantic Area, the United States which in 1940 had permission, either directly or by rights granted its airlines, to operate to Portugal, to France, to England, and to Ireland, in 1944 wanted routes to Iceland, Norway, Sweden, Finland, Russia, Germany, Czechoslovakia, Austria, Switzerland, Italy, Spain, Greece, Turkey, Iraq, Iran, and India.

In the Pacific in 1938 United States routes extended beyond United States territory to only one area: Hong Kong-Macao (via the Philippines). The 1944 goal required the United States to acquire additional rights to Japan, China, French Indo-China, British Malaya, Indonesia, Australia, New Zealand, the Fiji Islands, New Caledonia, and the Canton Islands.

Of all the routes deemed essential in 1944 only those in South America had been relatively well established by that time through negotiations between private operators and the South American governments.

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[11] On What Principles Should Bilateral Advantages Be Assessed? 2 Bulletin, L'Institut du Transport Aérien (I.T.A.), Paris, France, 31 (1958).

[12] International Agreements and International Air Transportation, 22 J.A.L.C. 65 (1955).

In Africa, where in 1938 we had no operating rights, the announcement of 1944 declared it essential to have routes to French West Africa, the Belgian Congo, South Africa, Egypt, and Tripoli.

As will be seen by the areas named, the precise routes desired by the United States were often vague, as was bound to be the case until experience had been gained in actual operations under peacetime conditions. As a result the United States attempted to make its routes as general as possible so as to give its carriers leeway in setting up economically sound service patterns which would reflect the public need for air transportation.

In most cases the foreign country concerned went along with our desires largely because they were too involved with straightening out their economies at home and did not have the equipment, manpower, and other resources necessary to fly the routes which they obtained from us.

It became a standard practice, for example, for the United States to describe its own routes as being from the United States, as a whole, to specified points in the foreign country and similarly the foreign routes were described as from that country, as a whole, to specified points in the United States. Such descriptions were adequate for the airlines of both countries as long as the aircraft available were compelled by range limitations to fly from the nearest point in the United States, for example, from New York or Boston, across the North Atlantic with stops at Newfoundland, Iceland, Ireland, or the Azores in order to reach Europe carrying a good payload. Later however, as aircraft operating ranges were extended and trans-Atlantic hops could be made non-stop from several points in the United States, the value of the descriptions of the routes granted to the United States became evident.

In addition some foreign airlines since have developed rapidly into large and widespread international systems. Many of these already earn the major part of their income from their traffic rights in the United States. Nevertheless many are not satisfied with that and, believing that the United States airlines cannot operate if they have no place to go to, feel they now can obtain more liberal rights in the vast American market.

Observing the flexibility of the operations of the United States airlines, the foreign airlines are apt to say that, for the carriage of their third and fourth freedom traffic, they should be able to serve the same routes or group of routes as are served by the United States airlines. This has come to be known as "double-tracking" (to steal another expression from the railroads). The American carriers claim that such double-tracking does not give enough consideration to the size of the United States and the air travel market it offers compared to those of most or all foreign countries. Official United States policy as laid down in 1954 is that "in determining the routes to be included in bilateral air transport agreements, the United States will continue its objective of establishing, insofar as possible, an equitable exchange of economic benefits."[13]

While that policy seems fair enough, it is often questioned abroad. For example, Wassenbergh in commenting on United States policy claims that:

> ". . . the United States of America wants to apply the principle that the traffic potential of the points granted in each country should be as well balanced as possible, i.e., the principle of *quid pro quo*! It will be clear that this concept is only an expedient for the greater powers to obtain control over international civil aviation and that it can have no value as a sound basis for the regulation of international air transport."[14]

The foreign airlines' desire to double-track routes flown by American carriers to inland points in the United States, if accepted, would obviously

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[13] Civil Air Policy, *op. cit. supra* note 4 at p. 36.

[14] Wassenbergh, Post-War International Civil Aviation Policy and the Law of the Air, p. 111 (1957).

take from domestic United States airlines much of that traffic which previously the foreign airlines had deposited at ports of entry, as has always been the case for maritime carriers. The ability of aircraft to penetrate over the land masses of other countries has complicated not only international warfare but also international transport.

The foreign airlines are apt to emphasize our size much as Wassenbergh did in his comment quoted above and it is understandable that a number of European countries are apt to equate all of Europe or at least all of non-Soviet Europe with the United States or conversely to equate each individual state in our Union with each individual European country. For that reason they view any insistence by the United States on a port-of-entry philosophy as we would view a European-wide regional gateway proposal. However, the Europeans must be careful about pushing that concept because, if it were accepted, whereas the Europeans now have two international United States carriers competing with them on the North Atlantic, they logically might be faced with up to forty-nine American international carriers.

Actually a reasonable solution probably lies somewhere between the extremes of a single point of entry for the United States versus foreign airline penetration to each state of the Union. In some of its more recently concluded bilateral agreements, such as that with Germany, the United States has had to be more liberal in the grant of rights in the United States. This is a fact which has not been lost on those countries such as France which concluded their agreements with us in the immediate post-war period. In the opinion of many of these countries, we have again become harder to deal with subsequent to conclusion of the German agreement as is seen from this French description of the trend in international air transport policy in 1958 as, "The hardening United States attitude to foreign competition—following Congressional objection to the German agreement."[15]

"Beyond" Rights

"Beyond" rights are the rights granted in a bilateral air agreement for carriers of one or both parties to fly to a point in the country granting the right and beyond to points in any other country, or in its more restricted version, to a single other country or group of countries. Immediately following the war the United States was able to have broad "beyond" rights incorporated in most of its agreements with foreign countries. "Beyond" rights were necessary both to the United States carriers and to the logical development of a world-wide international air transport system. In most cases reciprocal "beyond" rights were not granted to foreign airlines. In the first place the United States appeared to be such a vast market that the then-embryonic foreign carriers gave in to our opposition to granting "beyond" rights in order to get entry into the American market. The United States contended, and still contends that it constitutes a natural terminal market rather than a natural stop-over market as do many European and other countries. Again, technological improvements and the rapid development of other countries after the war altered the attitude of foreign carriers towards "beyond" rights. European airlines flying into the northeastern United States from over the North Atlantic saw advantages to continuing to Latin America. The Latin American airlines flying into Miami, and later Washington, New York, and Chicago, saw obvious advantages to flying into Canada so as to pick up sun-seeking Canadians bound for the South. Later, as around-the-world operations became common, "beyond" rights in all directions were desired from the United States.

The development of the pattern whereby the United States obtained "beyond" rights abroad and yet did not grant similar rights to the foreign

[15] The United States and Foreign Competition: Revision of Bilateral Agreements—Current Topics—Bulletin, I.T.A. No. 1—January 6, 1958, p. 1.

countries, was probably a natural outgrowth of the development of the United States as a huge hub for international civil aviation. Its airlines profited by having foreign airlines deposit their passengers at the various United States gateways where they were picked up by United States domestic carriers and carried deeper into the country or possibly on to other countries by United States international carriers.

The "beyond" rights obtained abroad by the United States carriers permitted them to carry a considerable volume of fifth freedom traffic. This traffic otherwise would have been available to local or regional foreign airlines. This touches closely on capacity problems and will be discussed below. Actually a number of foreign carriers now have "beyond" rights from the United States. For example Air France flies "beyond" New York to Mexico City, Qantas flies beyond San Francisco and New York to London, etc.

A solution to the "beyond" rights problem again touches on what constitutes an equitable exchange. If "beyond" rights are discussed separately from other issues it can be argued that the United States should give up some of its "beyond" rights abroad or grant more "beyond" rights to foreign carriers. However, the American carriers contend that to do either would distort further the exchange of economic equivalents in favor of the foreign airlines.

Capacity

Capacity determination is undoubtedly one of the most thorny problems in international civil aviation today. The Bermuda principles on capacity were an attempt to reach a compromise between the British desire for a protectionist formula for its carriers and the United States desire for a multilateral policy of relatively open competition. Mathematical formulas which would predetermine how much capacity could be offered or how much traffic could be carried were considered but finally avoided in favor of general capacity principles which attempted to relate to one another the various types of traffic which a carrier might carry. Basically they stated "that services provided by a designated airline shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the countries of ultimate destination of the traffic." The right to carry fifth freedom traffic was to be related "to traffic requirements between the country of origin and the country of ultimate destination of the traffic, to the requirements of through airline operation, and to the traffic requirements of the area through which the airline passes after taking account of local and regional services." Control through bilateral consultations was to be exercised on an *ex post facto* basis if one party found that its carriers were being injured by services offered by foreign carriers.

Like many reasonable general principles these principles can work only when both sides are in general agreement on their meaning. However, as is so often the case in international affairs, geographic location, the relative development of national aviation, commercial importance, political prestige, and many other criteria are applied by each country, resulting in widely divergent views concerning the capacity principles. Furthermore, as has been the case in customs tariffs through the centuries, when local industry is hurt by foreign competition it applies for, and usually receives, protection. In the case of air transportation such protection is relatively easy to justify because of the obvious national defense aspect of transport aircraft. For that reason most countries pay subsidies to their carriers in one form or another but there comes a time when they decide that it is foolish to pay subsidies which might be reduced or eliminated by applying restrictions to the capacity offered, or the traffic carried, by the foreign competitors of the local subsidized airline.

The American international airlines interpret the Bermuda principles liberally and assert that unilateral restrictions by foreign countries on the amount of traffic carried, the type of aircraft used, or the frequency of flights, are violations of the air agreements, as they are in most cases. They maintain that if there are violations of the capacity principles on the part of the United States airlines, as there are apt to be if competition is allowed to play a role, these are more than offset by equivalent violations by foreign air carriers in connection with third country traffic carried by them to and from the United States. Furthermore they always point to the fact that approximately 70% of all international air travelers to and from the United States are American nationals. Against this figure they show that less than 50% of the travelers on the lucrative North Atlantic runs now are carried by American carriers.

The United States has not always been successful in insisting on pure Bermuda principles on capacity. In a few cases lack of adequate bargaining power has compelled acceptance of restrictions. When negotiating with the United States, other countries, even though aware of the special conditions which resulted in such non-Bermuda terms, are tempted to seek such protective measures for their own airlines. The United States, nevertheless, continues to promote the concept that predetermination of capacity is contrary to liberal development of international air transportation and that *ex post facto* review provides an adequate safeguard.

Another aspect of the capacity problem is the so-called sixth freedom problem. Sixth freedom traffic refers to "traffic between two foreign countries via the country of the airline carrying that traffic." However, the term sixth freedom can be confusing because some authorities, like Sir George Cribbett, call cabotage the "sixth freedom."[16] Furthermore sixth freedom has become a dirty word in American civil aviation where it is claimed that this traffic is part of fifth freedom. It is not even particularly well liked by some of the small countries who greatly profit from such traffic (Belgium, The Netherlands) who claim that each sixth freedom flight is, in fact, a fourth freedom flight when coming into their homeland and a third freedom flight when leaving. Such traffic does not constitute an important percentage of all traffic carried by the large countries. But, in the case of the smaller countries, such as Belgium and The Netherlands, with important airlines, this traffic looms large, since they clearly could not exist on the traffic generated in their own country or even on fifth freedom traffic generated between their own country and the United States.

It has not been possible to solve this problem since it does not seem practical to specify what traffic an airline may carry from points back of its homeland. One clarifying step would be to agree on the freedom category of such traffic.

This problem will remain with us since the Bermuda principles are deliberately vague and their application continues to be not wholly satisfactory to any party to this agreement. It is important to remember, however, that the free-world's basic interest should be to have an efficient world-wide air transport system and acceptance of control is bound to retard the natural development of this means of transportation. Some solution is called for and it may lie in the direction of a refinement and further spelling out of the Bermuda principles, since the faults in the Bermuda principles do not appear to lie in what they say but rather in what they do not say. On the basis of experience during the past ten years it should now be possible to further evolve the Bermuda principles so that they will at least be clearer to everyone, even though they may not satisfy everyone.

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[16] Cribbett, Some International Aspects of Air Transport, Royal Aeronautical Society, p. 7 (1950).

The alternatives are worse for as Wassenbergh says:

> "A system that . . . is based on the traffic offering per section—and that is any system that tries to create economic order in the air by means of regulations with respect to capacity—thereby fails to recognize the supreme importance of promoting the development of *world* air transport."[17]

Statistics

Statistics are used to confuse the capacity question just as they are used to confuse any question where confusion is of great practical interest to the confuser. Since the Bermuda principles state, among other things, that the services provided by a designated airline shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which that airline is a national and the countries of ultimate destination of the traffic, and that third country traffic is permitted but must be supplementary to the primary traffic, statistics obviously are needed to determine that relationship. Relatively few countries in the world have developed satisfactory statistics on any subject and particularly not on new subjects such as air transportation. Many countries have found it easier to learn to fly airplanes than to count the people getting on and off those airplanes.

Bilateral consultations based on statistics have in most cases ended in disagreement on the reliability of statistics, the designation of the categories of traffic as determined by those statistics, or the basis on which the statistics are computed. For example, should they be computed as passengers, passenger-miles, ton-miles, or on some other basis? What does a stopover do to a trip? How short can a stopover be and still be considered a stopover?

Again let us quote a French commentary on the American attitude toward Freedom statistics:

> "Even in the case of countries with a large potential of direct exchange (Third and Fourth Freedom) traffic, the American principles applying to Fifth and Sixth Freedom traffic may well lead to estimates of a higher revenue from the latter (mileage being taken into consideration) than from direct exchange traffic. The United States might then conclude, according to the logic of its system, that there was a violation of the 'Bermuda principles,' which stipulate that the fundamental gauges for service on international routes shall in every case be Third and Fourth Freedom traffic. If, however, according to other criteria Fifth and Sixth Freedom traffic is defined more stringently—which is perfectly legitimate in a field open to arbitrariness—it is possible to derive different statistical results and hence quite different revenue estimates."[18]

Thus states not only disagree about the acceptable proportion of fifth freedom traffic to third and fourth freedom traffic but are not even in agreement on how to identify the traffic. Perhaps some day a group of international statisticians can sit down and solve the problem of airline statistics independently of other factors, after which an attempt can be made to sell an international statistical system to the aeronautical authorities of the various countries.

Multiple Designation

Multiple designation refers to the designation by a country of more than one national airline to operate on individual international routes. This has caused considerable difficulty in negotiating and implementing our bilateral air agreements.

To touch on the background, the United States early considered, and finally rejected, the chosen instrument concept in international air trans-

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[17] Wassenbergh, *op. cit. supra* note 14 at p. 52.
[18] 2 Bulletin, I.T.A. p. 30 (1958).

portation. Before the War, Pan American World Airways was in many respects treated as a chosen instrument. Several chosen instrument bills were introduced in Congress but all were defeated. The United States determined that several carriers would be authorized to operate internationally and consequently, when our bilateral agreements were negotiated we insisted on referring throughout to "an airline or airlines designated by the Government of the United States." Similar reference was made to an airline or airlines of the foreign country involved but in most cases that phrase had, and still has, little significance. At first only one American carrier was designated for each specific route although these routes overlapped in some cases. Now at least two American carriers are authorized to operate to all major traffic points abroad. Foreign carriers are afraid of the competition of even one large American carrier. They are naturally at least twice as fearful of competition from two such carriers. Normally the foreign countries operate only one flag carrier and do not see why the United States insists on more than one carrier.

Competition between the two or more United States carriers results in extensive programs of advertising, re-equipment, service, etc., and the foreign carriers claim such programs are almost impossible to compete with. The United States on the other hand maintains that there is enough traffic for all on the routes which have more than one carrier operating on them and that, furthermore, since the majority of the traffic is of United States origin or destination, United States carriers should have a right to a majority proportion of such traffic. Foreign carriers would be happier and foreign countries perhaps would be easier to negotiate with if only one American carrier were designated for each route.

Some authorities have felt that the multiple designation policy should be restudied, since the considerations which resulted in its establishment many years ago may have changed. Nevertheless, on February 18, 1959 the President, in a letter to the Chairman of the Civil Aeronautics Board, stated, "As you are aware, this Administration is firmly committed to the view that the public interest requires competitive American flag service at the earliest feasible date on all international air routes serving major United States gateways."[19]

Thus the multiple designation policy is more firmly established than ever before. The terms used in the President's letter are more far-reaching than those previously used. For example, just a year ago, on February 4, 1958 in another letter to the Board Chairman on the same subject, approximately the same statement was made, but it included the conditional phrase, "wherever the traffic justifies it, . . ."[20]

The President's new statement appears to transcend even the declaration of policy on competition in the Federal Aviation Act of 1958. Among other things listed in Section 102 which the Board shall consider as being in the public interest, and in accordance with the public convenience and necessity is:

> "(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;"

While the President's statement was contained in a request that the Board consolidate all Pacific air route matters into a single record, it is bound to be widely studied as the most recent expression of United States policy on multiple designation.

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[19] Civil Aeronautics Board Press Release, February 18, 1958.
[20] *Ibid.*

Change of Aircraft

We have chosen here the term "change of aircraft" for what is commonly called by the railroad term, "change of gauge." Jargon is bad in general because the layman does not understand it, and jargon which is taken from one medium into another medium where, as in this case, it has no relationship whatsoever to anything concrete seems inexcusable.

Change of gauge was first defined in the 1946 Bermuda Agreement as "the onward carriage of traffic by an aircraft of different size from that employed on the earlier stage of the same route" (Article V(a) of Annex). The term "trans-shipment" was used in the 1946 agreements between France and the United States and between Belgium and the United States. It was defined as "the transportation by the same carrier of traffic beyond a certain point on a given route by different aircraft from those employed on the earlier stages of the same route" (Section VI(a) of Annex). Lissitzyn points out that trans-shipment is therefore a broader term than change of gauge since change of gauge mentions "different *size*" whereas trans-shipment says only "different aircraft." He thus concludes that change of gauge is only one type of trans-shipment.[21]

The 1946 United States-Brazil agreement contained practically the same change of gauge clause as the Bermuda agreement. The 1946 United States-India agreement (no longer in effect) used the term "change of aircraft" when "different aircraft are used on different sections of a specified air route, with the point of change in the territory of one of the contracting parties" (Article V).

The Bermuda and Indian agreements have conditions for change of aircraft implied by the following language: "when, for the purpose of economy of onward carriage of through traffic, different aircraft are used . . ." The agreements with Belgium and France do not have such overt restrictions but Lissitzyn concludes that such conditions are assumed.[22]

Most United States agreements, other than those early ones cited above, do not have change of aircraft clauses because it was decided that they were not needed and that it was a normal part of efficient international air transport operation to change aircraft when that was required by the volume of primary traffic carried.

The United States has taken the position that change of aircraft is consistent with the Bermuda principles, particularly since the agreements do not refer in any way to the type of aircraft to be used. Since the type of aircraft does not appear, why should a *change* of type be specifically provided for? Also, since the normal change-of-aircraft operation provides less capacity as the airline moves farther from its homeland, it results in closer adherence to the Bermuda capacity principle than if the larger aircraft continued on that route, offering many more empty seats to new passengers, a large proportion of which would be Fifth Freedom.

United States carriers do change aircraft at several places such as London and Tokyo where the onward traffic from those points does not justify the use of the large intercontinental transports used on the trans-ocean portion of the route or where operational considerations, such as the condition of the airports, on the balance of the route prevent their use.

As the size of aircraft have increased, change of aircraft has become more necessary. This has created some dissatisfaction abroad on the part of local or regional carriers who can stand seeing the large American operators flying in from across the ocean, if their own aircraft can carry some of the same passengers on from that point. Having an American aircraft

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[21] Lissitzyn, Change of Aircraft on International Air Transport Routes, 14 J.A.L.C. 57 (1947).

[22] Lissitzyn, *ibid.* p. 58.

based locally and operating on what may amount to a shuttle run in a foreign area is sometimes irksome.

Competitive Fares

The Civil Aeronautics Board has no direct control over the setting of fares in international air transportation. In general the International Air Transport Association (IATA), the carriers' association, is depended upon to stabilize international fares. As other means of restricting competition by the large carriers have failed, there has been a certain amount of price-cutting on the part of smaller airlines. Price-cutting is particularly rampant in Latin America with many non-IATA carriers charging drastically reduced prices in competition with the large trunk-line operators. In some cases such price cutting appears to be justified by the relatively old equipment in use. However, some of those carriers have now been able to obtain more modern aircraft and continue to operate on their lower than IATA fare schedules.

In 1952 Argentina, in exchange for dropping other forms of regional restrictions, required the trunklines to charge higher rates between Argentina and surrounding countries than did the local airlines.

Rate cutting could of course become dangerous in international air transportation although it seems unlikely that the various governments would allow it to deteriorate too far. It is possible that, as some of the rate-cutting foreign carriers claim, the lower fares will open up new mass markets for air transportation, something which seems to be badly needed in the near future. As a matter of fact, American carriers, and Pan American in particular, have traditionally been in favor of fare reductions. However, they believe in reducing rates on an orderly and economic basis when such reductions might increase air travel. International coach fares and North Atlantic economy fares, though not true rate reductions, since they also provide reduced service, have proved to be a success.

THE JET TRANSPORT AGE

So far we have made little reference to the jet transport age. That was purposely done so that it would be clear that the problems with which we are going to be faced in accentuated form during the next months will be recognized as having been with us for some time. They should not be blamed entirely on the jet transports. The jets have introduced a new dimension into air transportation. Their speed is so much greater that in any scale of performance and productivity of post-war transport aircraft there is a large gap between the most advanced propeller-driven piston aircraft and the pure jet transports now being introduced. It is not adequate to simply say that they are just a faster, bigger aircraft. They are so much faster and so much more productive that they require a complete review of the patterns of air transportation. One writer, L. L. Doty, goes so far as to claim that as a result, complete redrafting of most bilateral air pacts now in effect will be required during the next twelve months.[23] This is undoubtedly an exaggeration but is indicative of some of the fears inspired by the jets.

Certainly the jets will change many things. Longer runways and, in some cases, differently located airports will be necessary, as well as improved facilities for the aircraft and their numerous passengers. But these problems are largely technical and are being met. The political and economic problems may not be so easy to meet. For the time being the jets can fit into the trans-oceanic routes without great trouble but as more and more jets are put into operation and as they fly to the outposts of the world,

[23] L. L. Doty, Bilaterals May Be Redrafted for Jet Era, "Aviation Week," November 17, 1958, p. 39.

problems will begin to arise. The jets will not be suitable for shorter hops. Therefore certain routes may be abandoned to local carriers. Smaller national carriers may not feel able to get involved in the large investment program required for the expensive jets and may abandon some of the trans-oceanic rights which they now have. Any change along these lines may require a reconsideration of the patterns and terms of the international exchange of air rights. It will also raise the question of change of aircraft because the large trunk-line carriers will try to continue to give their present far-ranging service by more extensive use of change of aircraft. This in turn will be resisted by some governments much more strongly than it is today, since in such resistance they will see the only prospect of keeping any international business for their local non-jet carriers.

The following French comment indicates the foreign concern about change of aircraft in the jet age:

> "Operations with large jet aircraft will call for the long-haul stops to be few and far between serving the main continental gateways. One idea advocated for some time now is for traffic to be taken from there on to its various destinations in smaller aircraft; the expression 'change of gauge' means just that. But what is to determine the capacity offered by these regional service aircraft? According to the Anglo-American Agreement, it is 'the traffic traveling in the larger aircraft normally requiring to be carried onward'; and the smaller aircraft 'will operate only in connection with the larger.' Thus if, on a New York-London-Zurich-Athens-Beirut airline, the long-haul aircraft stops only at London and Beirut, passengers going from New York to Zurich or Athens will have to be taken from London onward in an aircraft which:
> (a) offers capacity in relation to such American Third Freedom traffic;
> (b) Operates only in connection with the long-haul flight."[24]

The seriousness of the capacity problem will soon be doubled in the same way that the jets now on order will within a very few years double the capacity that the airlines can carry. There will be a stronger competitive urge to fill that capacity and those carriers who do not get jets may insist that restrictions be imposed for their protection.

Such protection has already been sought in the field of rates. The October 1958 IATA traffic conference broke down completely on the question of surcharges (15 to 30%) for jet fares. Finally in February 1959 agreement was reached on much more reasonable jet surcharges, (4.5% first class, 5.8% economy class) thus avoiding a general open rate situation and the rate-cutting which undoubtedly would have followed.

One new element which will show itself much more prominently in the jet age is that of competition from the Soviet Bloc. The Soviets were first with a jet transport on the international routes, even though it is an inefficient conversion of a jet bomber. Now it is known that they are developing what promise to be efficient jet and jet-prop transports. It is not entirely clear what part these aircraft will play either in the competitive market of aircraft sales or in operations by Aeroflot but it is quite certain that competition is coming from that direction and there is no reason for the western carriers or aircraft manufacturers to be sanguine about the chances of the Soviets "playing the game" as to rates, terms, fair competitive means, etc.

THE OUTLOOK

In view of the problems with which we are now faced and with which we shall be more and more concerned in the near future, where do we go from here? Should we abandon the Bermuda principles? In many ways they have

[24] The Bermuda Capacity Clause and Tomorrow's International Operations, 3 Bulletin I.T.A. p. 62 (1958).

served us well though they now appear to be too vague and too general for the sharp competition which has developed. Many countries prefer a frank resort to predetermination of capacity using some kind of a mathematical formula. There may be some wistful attempts to return to a multilateral concept which, even as late as 1954, remained "the ultimate objective of the United States."[25] It seems unlikely that such a concept can work during a period when nationalism seems on the increase rather than on the decrease throughout the world.

Compromises may be possible by a further spelling-out and clarification of the Bermuda principles. A compromise may be possible between the national and the multilateral concept in the form of a type of regional concept. Perhaps the large and feared jets may be used on those longer routes where they are most efficient. One interesting idea under discussion is that for a multilateral agreement which would grant to all adherents unlimited traffic rights to regional gateways, or to ports of entry within individual countries, for all commercial aircraft coming from or going to a next stop at least a given distance away, for example 1,000 miles. Exchange of rights for shorter distances would then be covered by bilateral agreements.

There has also been some talk about putting air transport relations under the treaties of friendship, commerce, and navigation which now cover maritime relations. This idea, too, deserves more study and perhaps the possibility of consolidating the latter two ideas should be considered. At any rate there is clearly much work to be done in this field. It is a sad commentary that we have not yet been able to do more in the direction of rationalization.

One need only look at an air-route map of the United States-Canada border to see how badly we have done and how difficult the task is. There are a good number of trans-border routes in the East; there are a few in the Far West but in the middle there is a large gap with very few air routes in an area where air transportation would seem to be the natural means of communication because of the long distances involved and limited surface transportation available. Furthermore this gap is not due to any lack of interest on the part of the air carriers as is evidenced by the number of applications to perform such services before the Civil Aeronautics Board and its Canadian equivalent, the Air Transport Board. Nor are the local communities reluctant about begging for such services. These two friendly neighbors have simply not been able to reconcile the various conflicting interests and agree to an exchange of rights in addition to those already granted.

Let us close with the following French comment which indicates the problems to be faced in the near future by the United States in trying to defend and sustain the Bermuda principles:

> ". . . Since the spirit, if not the letter, of the Bermuda Agreement is no longer respected by those who conceived it and imposed it on their partners, it is not sure that the rather platonic principles of 1946 will stand up to the hard facts and necessities of 1960. The combined application of the capacity clause of Bermuda type agreements, and of the change of gauge clause which in practice will go hand in hand with it as far as the main long-haul air routes are concerned, will inevitably give rise to clarifications and adjustments, which are likely to be all the more imperative as the wording of the clause is the vaguer (and some of the change of gauge clauses are extremely vague). However, the importance of such an adaptation of capacity provisions to the new requirements, and multiplication of problems by the very nature of the bilateral system, will probably prevent their examination before operating conditions and programs for the new flight equipment become clear. For the Bermuda principles as for many other things the critical time is likely to be 1960."[26]

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[25] Civil Air Policy, *op. cit. supra* note 4 at p. 35.
[26] 3 Bulletin, I.T.A. (1958) *op. cit. supra* note 24 at p. 63.

INTERNATIONAL ROUTE AIR NAVIGATION FACILITIES AND SERVICES—ITS FINANCIAL ASPECTS FROM A CANADIAN POINT OF VIEW

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Introduction

In November 1958, the Council of the International Civil Aviation Organization (ICAO) practically endorsed all eight recommendations of the International Conference on Route Charges, which discussed the problem with the delegates from 27 countries for almost two weeks at Montreal (18 March-1 April, 1958). In turn the Conference had based its discussions on a detailed report that was prepared by the ICAO Air Transport Committee acting under the direction of the Council. This report was issued in May 1956 after several years of study, following the ICAO First Assembly's resolution in 1947.

It seems worth while, therefore, to summarize briefly the financial order of magnitude of the problem, and its relationship to the international air transport in general, and to the leading countries in civil aviation like the United States, in particular.

It should be added that in November 1956 a similar conference was held in Montreal on charges at international airports. As these two subjects: the airport- and route charges are closely related, the 1956 discussion was of a great assistance to the Route Charges Conference in March 1958."

The paper falls into two parts; Part I summarizes the statistical data submitted to the Conference and the Conference's Final Report, whereas Part II contains personal afterthoughts and suggestions about a "clearing house" between governments as a means of solving the problems of payments for international route facilities.

Part I

Definition of Terms

Broadly speaking, all outside assistance to the airlines' operation that is not shown in their financial statement comes under two main headings: (a) airports' facilities, and (b) route facilities. The distinction between these two is defined by the use to be made of the service. Any facility used when the aircraft is on the ground, or in connection with a landing or take-off, is regarded as an airport activity. Conversely, any use of an outside facility or a service in flight is regarded as a route activity. Admittedly, there are instances where the same facility or service—depending on the manner in which it is used—can be considered as both an airport and a route activity. For example, if a control tower is calling a landing aircraft, and simultaneously provides information to another aircraft which is overflying the airport, the control tower is then engaged in both airport- and route-activities. Similarly, meteorological information about the ground condition, as it refers only to take-off or landings, should be classified as an airport activity, whereas all meteorological services that refer to a flight (after take-off and before landing), is to be considered as a route facility,

even when such service was provided on the ground to the pilots during a briefing. The classification is of more than academic interest because, in practice, the cost of the facilities and the charges, if they are related to cost, depend directly on the classification. But, the allocation of costs in these instances must be arbitrary; for example, the operating cost of a control tower may be spread equally between an airport and a route service.

The air navigational facilities have been sub-divided into seven groups, defined as follows:

1. *Communication Facilities.* Includes both ground-to-air communication en route, and ground-to-ground, when these are used directly or indirectly in connection with flight. Communications which are used for approach or aerodrome control, however, are considered as an airport facility.

2. *Navigational Aids.* These include all ground radio and visual aids to navigation en route.

3. *Air Traffic Service.* Covers information en route only, i.e. excluding traffic service provided during take-off or landing which is considered as an airport facility.

4. *Meteorological Services.* Meteorological Services include all service which is rendered directly, or indirectly, e.g. during crew's briefing, in connection with flight. It encompasses the services of ocean weather stations, but excludes information pertaining to met. conditions for take-off or landing.

5. *Emergency Landing Grounds.* These include any emergency landing ground provided specially for international civil aviation as a requirement in a Regional Plan. It may be noted that there are at present eight ICAO Regions: Middle-East; European-Mediterranean; North-Atlantic; Caribbean; South-East Asia; African-Indian Ocean; South-America-South Atlantic; and Pacific. It is characteristic for the regions' boundiaries that most of them overlap.

6. *Search and Rescue Service.* These include any permanent establishment of equipment and personnel for Search and Rescue purposes but excludes the additional resources utilized on particular Search and Rescue missions.

7. *Miscellaneous Services.* These include any permanent establishment of equipment and personnel maintained for the purposes of providing aeronautical charts and information services.

Financial Order of Magnitude

The global financial estimates by the ICAO Airport Committee on the navigational and airports' facilities and their relationship to the airlines' international operation, have been published by the Committee on different occasions and are grouped below for convenience in a tabular form.

WORLD'S INTERNATIONAL AIR TRANSPORT COSTS AND REVENUES
1956
(*In Millions of Dollars*)

	Total Costs	*Revenues*	*Net Cost (Total Costs-Revenues)*
Airlines	1,236	1,200	36
Facilities	179	90	89
a. Airports	116	85	31
b. Route Navigation	63	(5)*	58

* See Text.

Canada's share of the world's totals is apparent from the table below.

CANADA'S INTERNATIONAL AIR TRANSPORT COSTS AND REVENUES
1956

	Total Cost		*Revenues*		*Net Cost (or Profit After Income Tax)*	
	Millions of Dollars	*Percent of World*	*Millions of Dollars*	*Percent of World*	*Millions of Dollars*	*Percent of World*
Airlines (TCA & CPAL)	41.89	3.4	42.64	3.6	(.75)	N.A.
Facilities	16.30	9.1	4.47	5.0	11.85	13.3
a. Airports	7.84	6.8	2.95	3.5	4.89	15.8
b. Route Navigation	8.46	13.4	1.52	30.4	6.94	12.0

It must be strongly emphasized that the above figures—in particular the global ones—are merely an indication of the order of magnitude and are based upon much estimating and arbitrary allocation. A large proportion of the airports' revenues and practically all the routes' revenues stem from the airlines' payments and, therefore, are hidden in their costs. And, if in some instances the airlines themselves provide the airport or navigational facilities, such expenses are reflected in their total cost, too. In short, for the international air transport industry as a whole; both the airlines and the facilities, the grand total cost would equal the airlines' cost plus the net cost of the facilities, as the latter is not borne by the airlines. Thus the total figure for international air transport in 1956 would be of the order of $1,325,000,000.

It is interesting to note that in the global cost of $63 million for route navigation, over one-third is accounted for by meteorological facilities; $15 million represents the aviation allocation of the jointly financed ocean station vessels in the North-Atlantic, and about $10 million for the territorial met. expenses.

In the ICAO's estimates for the international routes, the revenue of $5 million, as indicated in our table, is not shown directly; when we add the individual statements from the contracting states, we end up with a figure of $3.55 million (see Table 2 for details), and this figure we have extrapolated to $5 million to account for the revenues from the ICAO members which did not furnish their statements. In some of these countries, the airlines themselves operate the navigational facilities directly or through a non-profit organization jointly established by them, and usually approved by the states concerned.

Regarding the relative cost of airports and route navigation facilities, we may conclude from the table that although the gross costs of international airports are almost twice as high as those of the route facilities, the reverse is true for the net cost.

From the airlines' global figures for 1956—as estimated by ICAO—an operating deficit is apparent which, of course, implies that no additional charges could be absorbed on a global scale, without a corresponding rise in the deficit.

For 1957, the financial picture looks slightly brighter as a marginal profit of about one per cent of airlines' revenues was quoted at the Conference. The routes' net cost, however, is of the order of 5 per cent of the airlines' revenues, thus the 1957 global profit appears to be quite insufficient to meet the navigational expenses. But, in Part II of our analysis, if we turn from the global figures to the individual countries, it appears that even their 1956 operating profit was ample enough to meet the appropriate share of the navigational net costs (see Table 4a).

To relate Canada's data to the ICAO's global estimate, it was also necessary to make several assumptions. First, for the international operations of the principal Canadian carriers, namely Trans-Canada Airlines and Canadian Pacific Airlines, only the international traffic is shown separately and, therefore, the companies' total revenues and expenses have to be allocated arbitrarily to the international operations; this was done on the basis of available ton-miles flown.

Similarly, the yearly cost of the international route navigation of $8.46 million is much higher than the figure of $5.15 million shown in the working paper of the Conference (see Table 1 below) to account for several expenses omitted in Table 1. For example, the following allocated costs to the navigational facilities should be added: the trans-border traffic with the United States which we estimated of the order of $2 million; Canada's share of maintaining weather vessels of $.84 million; a $73,000 contribution to the joint financing arrangements with Denmark and Iceland; and finally a share of about $76,000 of Canada's contribution to the ICAO (Canada's yearly contribution to ICAO is about $128,000, which was sub-divided between airports and route navigational facilities in proportion to their costs).

It was estmated by ICAO that for the yearly global cost of route navigation of $63 million, about $18 million, i.e. about 29 per cent should be allocated to the North-Atlantic route. And in Canada's cost of international routes, the North-Atlantic share is even more predominant, as it accounts for over 70 per cent. As a matter of interest, it should be pointed out that according to ICAO calculations,[1] in 1957 the share of the Canadian carriers in the total number of crossings of the North-Atlantic, amounted only to 3.76 per cent, and this is confirmed by the fact that in Gander in 1956 the proportion of landings by Canadian carriers was less than 2 per cent. Bearing in mind that the North-Atlantic route plays such an important part in the International facilities provided by Canada, and that the North Atlantic route is definitely the most important route in international transport, it is rather disturbing that Canada's share in the global net cost is as high as 12 per cent, whereas in the airlines' global revenues, only 3.4 per cent. However questionable some of the statistical data may be, the unpleasant conclusion based thereon would continue, even if further statistical refinement were attempted.

International Route Charges in Canada

In 1950 two types of international route charges were introduced in this country:

(i) A landing fee with a combined route charge on all North-Atlantic and Caribbean flights calling on any of the Canadian airports. The charge came into effect on January 1st, 1950, and the rates have remained unchanged since that date.

(ii) A telecommunication charge on all trans-oceanic flights calling on any of the Canadian control towers. The charge was introduced on November 1st, 1950, with an increase in the rates, effective April 1st, 1958.

The combined route and airport charge is related to the aircraft gross weight, but it climbs slightly faster than the weight; for a DC-6 of 93,200 lbs. gross weight, the charge is $127, while for an aircraft with a gross weight twice as high, the charge increases to $277.75.

As a rough approximation, we may say that one-half of the charge reflects the airport's cost, whereas the other half is a contribution to the costs of navigational facilities.

[1] Charges for International Route Air Navigation Facilities and Services (ICAO Doc.) (1956).

Although the collection of charges during landings is a very simple procedure, the obvious disadvantage of this method appears on overflights. In such instances, charges are not collected, despite the fact that the route facilities are used almost to the same extent, and the airports' costs do not decrease proportionally.

To be specific, during the last fiscal year, the landing fees at Gander have decreased due to overflights by more than $400,000 from the previous year. This accounts for a substantial operating deficit before depreciation, against a surplus for the previous year for which figures are shown in the Working Papers of the Conference.[2] The trend of overflying Gander is likely to continue, as pointed out by The Economist: "Once a non-stop crossing has been shown to be technically feasible and is commercially offered, there can be no going back on it."[3]

The telecommunication charge is a flat charge; $20/flight irrespective of the aircraft's gross weight, or the number of messages (contacts) during one flight. (Up to April 1st, 1958, the charge was $13/flight.)

This charge is intended to recover part of the telecommunication cost for voice transmission, whereas the navigational charge combined with the landing fee reflects the cost of control towers and the operational cost of automatic devices such as Loran stations, and radio beacons.

The special position of Gander- and Shannon- Airports was recognized by the Conference. The fact of over-flying is recorded in para 56 of the Final Report, with the following statement: ". . . the representatives of Canada and Ireland indicated that if problems of this kind became more serious for their governments in future, they foresaw that more special charging arrangements might have to be made."[4]

It may be added that effective August 1, 1959 the North-Atlantic route charges will be separated in Canada from the landing fees by introducing a $64 charge per flight and decreasing the landing fees by the same amount. It has been figured out that such change in method of paying for the navigational services will counterbalance the financial deterioration of about $1,140,000 during the fiscal year 1957/58 relatively to the previous year, due to rising of costs and losses of revenues on over-flights. (Canada's net cost shown in Table 1 practically will remain the same after such a change in method of payment, as its main object was to restore the losses to the 1956/57 level shown in the table.)

Current Route Charges in Other Countries

At present, no charges are imposed on international routes in Europe—except Ireland and Malta—or in the United States. It is interesting to note, however, that the air carriers in the United States are considering the present federal gasoline gross tax of 3¢ per gallon with a 1¢ rebate to the purchaser is their contribution to the upkeep of federal airways. And last January (1959) the President in his Budget Message for 1960 had said "The magnitude of the burden on the general taxpayers for rising airway expenditures makes it essential that users of the facilities pay a greater share of the cost. To this end, legislation will be transmitted to raise the effective tax on aviation gasoline from 2 cents to 4½ cents in 1960 and to levy the same tax on jet fuels, which are now tax-free."

Such proposal, if approved by Congress ". . . will increase general fund receipts by an estimated $85 million in fiscal 1960 and by somewhat larger amounts in subsequent years."

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[2] Proceedings of the Route Facilities Charges Conference, Vol. I. Report and Working Papers of the Conference (1958).

[3] The Economist, Sept. 14, 1957, p. 862.

[4] Proceedings of the Route Facilities Charges Conference, Vol. II, Minutes (1958).

In Ireland, the telecommunication charges at Shannon Airport which are based on full cost recovery, amounted to £70,000 in 1957 compared to £50,000 in the previous year, when the charges were first introduced. To recover the full cost, the charges per flight at Shannon must vary depending on the number of flights; in 1957, it varied from $6.70 to $13.86 with an average of about $9.10/flight.

In many countries of Central and South America and Asia, the navigational facilities are operated by private companies, usually organized by the airlines themselves.[5] Sometimes these companies have taken over only the operating of the route facilities, leaving the ownership still with the Contracting States. Quite often the charges are imposed for each contact and although the rate per contact may look rather low, e.g. $1.50 on a long flight, the charge would be substantial, since over 50 contacts might be made.

In Australia—as in Canada, the navigational charges are combined with landing fees, but in Australia, the method of charging is more refined. This is done by having a standard rate multiplied by a factor allocated to each route.[6] In New Zealand, a route charge of $28 (£10) was imposed in April 1954, on any international take-off.[7]

By and large, when the navigational facilities are operated by a special organization which has been formed by airlines, the charges generally reflect the total cost to a much better extent than is the case of charges imposed by a government; an airlines' organization must base its charges on a full cost recovery, especially from the outside carriers who do not participate in operating the service, whereas a government organization can afford to accept a partial cost recovery.

Although the methods and rates in charging for international route facilities vary sharply from country to country, where such charges are imposed, this state of affairs is to be expected in view of the fact that airport charges even in the same country sometimes differ immensely; a survey of 136 United States' airports has revealed 151 different landing rates[8] (by contrast in Canada, all landing charges are standardized across the country).

To compare the Canadian international charges, we show on page 143 a sample of international landing- and route charges.

Route Costs in Different Countries

In Table 1, we summarize all costs of international air routes which have been submitted to the Conference by 23 countries out of a total of 70 ICAO members. But these 23 countries, as we shall see later on (Table 3a and 3) account for 79 per cent of the world's international air traffic reported to ICAO.

By and large, the cost of route facilities is related to the area of a country, and as these areas differ immensely, so the cost of air routes must differ too. However, we may notice in Table 1 that in European countries in general, and in France in particular, the international routes are relatively

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[5] Among these, the most important are; Aeronautical Radio Inc. (ARINC) which was established in 1929 by a number of United States' airlines; International Air Radio Ltd., which originated in the U.K., and now provides navigational facilities in many parts of the world (Mediterranean area, East Africa, Burma, and Pakistan); Radio Aeronautica Mexicana (RAMSA), and in Peru, Corporacion Peruana de Aeropuertos Y Aviacion Comercial (CORPAC). The last two companies are controlled by their governments.

[6] There are two unit rates per 1,000 lbs. of aircraft gross weight; below and over 20,000 lbs. The route factors vary from 1 to 13, depending on distance, with a factor of 8 for each international landing and take-off.

[7] Manual of Airport and Air Navigation Facility Tariffs, Sixth Edition, Montreal 1958.

[8] Jaworski, The Effect of Standard Charges on Canadian Airport Operations, 21 J.A.L.C. No. 4 (1954).

A SAMPLE OF INTERNATIONAL CHARGES FOR LANDINGS AND ROUTE FACILITIES

— 1957 —

NOTE: If a charge is related to aircraft's gross weight, a DC-6 of 93,200 lbs. is taken as an example.

Route Facilities Operated by:	Government		Special Companies		
	Canada	Australia	ARINC	CORPAC	RAMSA
Route:	London-Montreal	Melbourne-Brisbane	Vancouver-Cold Bay	Lima to Northern Peru and Santiago	Mexico City to Acapulco, Brownsville and El Paso
Distance (Stat. Miles)	3,242	887	1,710	1,310	1,319
	$	$	$	$	$
Charges:					
Total: Airport & Route					
—per flight	141.50	36.80	86.41	157.69	180.12
—per mile	.044	.041	.051	.120	.137
Airport (landing)	128.50[1,2]	36.80	14.91[4]	157.69[7]	5.12
Route Facilities:					175.00[6]
a. Navigational			71.50[5] = 58.50 + 13.00		
b. Telecommunication	13.00[3]				

[1] On a Montreal outbound flight to London, this charge would apply only at Gander if an aircraft lands there. Similarly, on an inbound flight from London, if a stop is made at Gander, this charge will be also imposed there in addition to a domestic landing charge of $23.50 made in Montreal. The charge refers to North-Atlantic crossings, i.e. no distance is specified. The charge increases with aircraft gross-weight —slightly more than proportionally.

[2] Does not include the departing passenger service charge at London of 5s./pass. levied by the airport management. On a load of 35 passengers, this charge would amount to $24.50. The international landing charge in London is $99.40.

[3] The charge is levied on each flight, i.e. is not related to distance or to aircraft's gross-weight.

[4] The corresponding landing charge at Vancouver amounts to $23.50.

[5] Includes an ARINC's navigational and telecommunication charge of $58.50, and the Canadian telecommunication charge of $13/flight. The ARINC's charge is based on a contact rate of $1.59 with an average of 36.9 contacts on this route. The charge is not related to aircraft's gross weight.

[6] Reflects cost of all navigational facilities which lie within 100 km. of the route. No relation to aircraft gross-weight.

[7] The charge is directly related to distance and increases with aircraft gross-weight—slightly less than proportionally.

much more expensive than on this continent. Admittedly, if we compare the recorded costs of Metropolitan France with those of West Germany in relation to their areas, the figure for France is only 7 per cent higher. On the other hand, if we refer the cost to the United States' area, the total international navigational cost for Metropolitan France would be almost 20 times as high. In the United States, only a very small proportion of the air routes' operating costs are allocated to international operations; in 1958 the total operating cost of the airways is estimated as $163.3 million[9] whereas in 1955 (see Table 1) only $5.2 million is shown. The latter figure, however, excludes the international facilities pertaining to the air traffic with Canada. In Metropolitan France, the costs of the international routes definitely represent a much higher proportion of all routes; a figure of 64 per cent was given for 1955, but it takes into account traffic with the French overseas territories.[10]

It was claimed by some delegates that the high cost of route facilities in Western Europe is caused by the overlapping of facilities in neighboring countries which, in turn, is due to military requirements. This is rather surprising, as it might have been expected that NATO—by stressing a unified command—would have tended to eliminate such overlapping. Finally, we cannot rule out the possibility that some significant discrepancies among the countries' route expenses may have to be traced to different accounting methods.

It is interesting to note in Table 1 that the cost of meteorological services is quite significant; it accounts for almost one-quarter of the total gross cost of air routes, and the figure may be raised up to 40 per cent if we include the weather vessels. The vessels in some instances played an active part in air rescue operations.[11] In the Canadian data, the meteorological cost figures are relatively under-estimated due to the fact that the radio transmission cost of met. information to aircraft is hidden in the cost of the Telecommunication Branch which is shown jointly with the Air Traffic Control in Column 3 of Table 1. Such transmission costs of met. data may exceed $0.4 million a year.

As underlined in the notes of Table 1, Joint Financing Arrangements with Denmark and Iceland are not included in the cost figures. Under this agreement, for the calendar year 1957, Denmark and Iceland received $1,172,799 and $1,022,734 respectively from the fourteen governments whose airlines cross the North-Atlantic above the 40th parallel. The contributing governments were assessed in proportion to the number of flights only, i.e. irrespective of the aircraft size. On that basis, Canada's share came to 3.76 per cent, with the United States leading the list with 42.1 per cent, trailed by the United Kingdom with 11.1 per cent, and the Netherlands, 10.7 per cent. As the total number of North-Atlantic crossings in 1957 approximately was 27,000, the assistance to the airlines by their governments appears to be of the order of $80/flight.

The revenues from the charges for route facilities which are recorded in Table 2 *do not change significantly the grand total of net costs*, but in some countries—Canada is one of them—the revenues are reducing the total costs by a substantial amount. And in an extreme case like Mexico, where the total cost reflects the contribution of the airlines and the expenses of the RAMSA organization, which operates for the government, it appears that there are no further burdens to Mexican tax-payers for assisting the operation of international air route facilities.

It is very unlikely that the countries will play the same role in inter-

[9] Schenkman, International Civil Aviation Organization, Librairie Droz, Geneva (1955).

[10] *Op. cit.* note 1.

[11] Schenkman, *op. cit.* note 9.

national air transport as carriers as is their contribution in providing route facilities for international air transport. This is illustrated by the last column of Table 1, where the share in net cost is shown in per cent of the sum of reported data to ICAO.

Therefore, it was quite apparent at the outset of the Conference that, by and large, the countries who are playing a more significant part as international carriers than as providers of international route facilities, would oppose a general introduction in the near future of user charges for international routes. And during the Conference, some of the delegates of these countries even went so far as to challenge the principle of charging for route facilities, claiming that the facilities are a safety device, the cost of which should be borne entirely by the state.

However, generally, it was fully recognized by the Conference that under Article 15 of the Chicago Convention, the preamble of which in fact is ICAO's Constitution,[12] the contracting states are fully entitled to impose charges on international carriers for airports and air navigational facilities, provided that the charges do not discriminate among the carriers and are not imposed solely for the right of transit or entry "of any aircraft of a contracting state" and providing that the charges are communicated to ICAO for publication. The Conference went so far as to say in its Final Report[13] that: "It was also agreed that there would be no objection to the provider making a profit out of charges for some facilities if other facilities were provided for the same users at a loss, or if the provider was attempting to recover losses made in the past. It was, however, felt that it would not be desirable for those providing route facilities and services for international civil aviation to have as a principal aim to set their charges at such a level that over the whole field and in the long period they would produce a net profit."

It logically follows—although it was not spelled out during the Conference—that a difference between the total cost and the total revenues from charges, which in Table 1, Column 7, we defined as "net cost," is in effect a subsidy in kind to the international airlines—a view heretofore expressed by Professor Lissitzyn.[14]

Distribution of Route Costs Among Airlines

The ICAO study, in its cost allocation of international route facilities to aircraft of different sizes, concluded that "simple straight-line relationship between weight and charge would seem to be best here as well as for airport charges (see Doc. 7462, C870, page 17)." The reference in brackets refers to ICAO's study of international airports.[15] It should be noted that in the quoted study (on page 18) the aircraft gross weight was emphasized not only as a proper index of cost allocation, but also as an index of the value of services rendered.

During the Conference, however, several delegates although admitting the aircraft gross weight as a criterion for airport charges, have challenged its validity for allocating route costs. In their view, route costs should be related only to the distance or flying time, because they found it hard to believe that one DC-7 would require the utilization of route facilities equivalent to about six DC-3's, as a route charge related to aircraft gross weight would imply. But, even when we admit that aircraft gross weight is not a good index for allocating route charges, it still remains as an index of value of service, or to put it differently, of the carrier's ability to pay. And the ability to pay, of course, is much smaller for a DC-3 operator, than for

[12] *Ibid.*
[13] *Op. cit.* note 2.
[14] Lissitzyn, Public Aid to Major Foreign Airlines, 18 J.A.L.C. (1951).
[15] International Airport Charges (ICAO) 1954.

a carrier in a DC-7 class. In practice, if a government decided to recover a fixed portion of its cost, and if the charges were to be imposed regardless of the aircraft gross weight, then some of the operators of smaller aircraft would be forced out of business, and it is obvious that for the remaining operators, the charges would have to be raised. As an illustration of how the unit charges must vary in a fixed cost recovery, we have already quoted the communication charges in Ireland. Only if a government decides to recover a substantial part of its costs, the decision as to whether or not to take into account aircraft gross weight is bound to be of practical importance in sub-dividing the country's route facilities between domestic and international operations. For example, in Canada, if we allocate the route cost to the trans-border movement of traffic in proportion to ton-miles flown, i.e. aircraft gross weight, the trans-border share would equal about 20 per cent of the allocated costs of the domestic operations, but if we allocate the cost on the basis of plane-miles flown, i.e. disregard the aircraft's size, the allocation to trans-border service would be only 10 per cent of the domestic share, or one-half of the previous amount.[16]

A Single Charge vs. A Composite Charge

The problem is whether the navigational charge should be quoted as one single charge, or as a composite charge incorporating several payments for the use of the various facilities and services. ICAO's survey, and a slight majority of the delegates during the Conference (including the Canadian delegate) favored a single charge as a more simple procedure. And even the supporters of a composite charge—with the United States as the main speaker—did not ask for a separate charge for each individual use of each individual facility or service. In their view, a separate charge should be established only if there is a significant difference in utilization of a particular facility. To the Conference's discussion, some personal comments may be added.

The 1956 survey of the arways' usage in the United States clearly indicated a wide gulf among the users with respect to the utilization of the control towers (partly an airport, and partly a navigational facility) and of fixed postings (which may be considered as a pure navigational facility). The air carriers, other civilian users, and the military accounted for control tower operations in the proportions of 30 per cent, 45 per cent, and 25 per cent respectively, whereas on fix postings, these three groups of users show a quite different distribution; 51 per cent; 6 per cent; and 43 per cent respectively.[17] But even when a single charge is imposed, these three major groups of users are usually taken into account for cost allocation. Actually, a practical meaning would appear only when we approach closely a level of full cost recovery, and not at the present stage when most of the providers of the facilities who have already imposed a charge are aiming at less than one-half of cost recovery. Admittedly, among the same group of users, the principle of a composite charge represents an ideal method from an accounting point of view. Apart from the administrative costs of fulfilling such an ideal in practice, a composite charge introduces an incentive for the unnecessary diversification of equipment or services, thus raising the cost, as they then must be distributed among a small number of users. And technically, a parallel usage of different equipment or facilities provided independently from a different source may endanger safety even when the absolute error of the equipment or facility is of the same order. To illustrate the diversification aspect among the scheduled carriers on the North-Atlantic, let us

[16] Compiled from the 1956 statistics, as published by the Dominion Bureau of Statistics.

[17] Osmun, Civil Aviation Faces Airways User Charges, Business Commercial Aviation, March 1958.

quote an example. TWA may claim a reduction of our oceanic landing rates, in view of the fact that to some extent these rates include the cost of Loran stations which facility TWA is not using at all, although all other major airlines do. Obviously, if we want to maintain our cost recovery at the same level, any reduction granted to TWA must be compensated by an increase of rates to other users. However, TWA's policy of not using Loran facilities is under sharp criticism even in the United States, where a Coast Guard spokesman told American Aviation: "TWA argues that they have to carry a navigator and he ought to earn his money."[18] Thus the reason for TWA not using the facilities seems to be—to say the least—rather unconvincing.

Regarding a cumulative error of facilities or services provided by different sources, we may refer to an interesting discussion in the United Kingdom at the Institute of Navigation about traffic control problems over the North-Atlantic. It was pointed out during this discussion that if two aircraft are using found winds or forecast winds from different forecast offices, they may converge just because they are making different allowances for windage and, therefore, for a given level of risk, the two tracks must be made to fly 120 miles apart. On the other hand, if these two aircraft are using forecasts from the same office, even if it is wrong, the courses followed by both aircraft will err in the same way, and consequently they are less likely to converge, and for the same level of risk, the separation may be reduced to 60 or 80 miles.[19]

Further Requirements

It was rather a pleasant surprise during the Conference that the delegates were told by IATA, which represents a majority of the international carriers, that no additional requirements for route facilities are anticipated solely for the forthcoming jet aircraft. And it was claimed that the jets may even decrease the cost of navigational facilities, as it would be advantageous to combine several small navigational centers into one unit, covering a large area. Furthermore, it was mentioned by some delegates that there is a possibility that a Doppler airborne equipment now under development may cut considerably the carriers requirement on navigational ground facilities. However, more recently in the United States Mr. M. Rogoff, Executive Engineer of the Federal Telecommunications Laboratories, has stated that:[20] "In all likelihood ground-based radio navigation aids will always be required to correct the inherent errors of these self-contained sensors."[21]

And even at the Conference, at the opening the Chairman of ICAO Air Transport Committee mentioned an additional expense of $3 million for the trans-Atlantic route to link traffic control centers by a forward scatter radio system or by a new submarine cable. According to our experts, Canada's share under the first alternative would amount to a capital cost of about $900,000 and yearly expenses of $85,000 for maintenance, plus $45,000 as a contribution to ICAO. Under the second alternative, which technically appears to be more reliable, the yearly cost of the cable usage would be of the order of $350,000. In short, despite the fact that there are no special requirements for the forthcoming civilian jets, in the next 2-4 year this

[18] Campbell, Electronics and Trans-Canada Air Lines, Can. Aero. Journal, May 1958.

[19] Frazer, Navigation and Traffic Control Over the North Atlantic, X Journal of the Institute of Navigation, No. 2 (1957).

[20] Rigoff, Radio Navaids for Long-Range Flight, 17 Aero/Space Eng., No. 5 (May 1958).

[21] Especially in areas with a high traffic density like the North-Atlantic, airborne Doppler would tend to reduce the existing separation standards rather than replace the present system of ground radio aids.

country will be faced with an additional cost on the North-Atlantic route of not less than $350,000. Regarding operators, Mr. C. J. Campbell, T.C.A., Director of Telecommunications, has made an interesting observation:[22] "I regret to say that in my some twelve years' association with civil aviation we have not removed one single communication of navigation service from the aircraft, although we have installed systems which are lighter and more compact than the original."

Conference Decisions

We have already made several references to the discussions during the Conference, the Final Report of which runs into 40 pages,[23] with several recommendations. The gist of the Conference appears to be clearly reflected in paragraph 24 of the Final Report which reads:

> "It seemed clear that no general statement could be made as to whether user charges for route facilities and services are desirable or undesirable in every case. Each State must decide for itself whether when and how such charges should be imposed. There were, however, a number of important practical considerations to be taken into account, of which the most important was that any substantial new charges imposed globally on the airlines in the near future might well have a serious effect on the financial position of international air transport, which was at present going through a difficult transitional stage. On these grounds a number of delegates were strongly opposed to the imposition of user charges in this field, at least for a considerable time. The majority of delegates, however, felt that the burden on a number of governments of providing these facilities and services free was becoming too great and that user charges must be regarded as being inevitable sooner or later in such cases. They should, however, be introduced gradually and progressively with careful attention to the resultant effects on the economy of international air transport."

This statement was agreed upon after a lengthy discussion by a majority of 16 to 7. There is, of course, a long list of administrative recommendations, from which we would like to quote the following:

—the charges should not be imposed in such a way as to discourage the use of facilities and services;[24]
—charges, wherever possible, should refer to the facilities provided by an appropriate ICAO Regional Plan, and should be revised with the plan accordingly;
—the Contracting States are responsible for a non-discriminatory route service even if the service is provided by a private organization.
—the carriers should be consulted directly or through their associations before any charges are imposed;
—three months' advance notice, if possible, should be given before the charges are put into effect;
—the Council should review the cost and revenues of international routes at intervals approximately three years, requesting for that purpose the necessary statistics on an *ad hoc* basis.

The Final Report—as authorized by the Conference—has been approved by the Vice Chairman, Dr. E. M. Loaeza, Chief Delegate and Representative of Mexico to ICAO.

PART II

Afterthoughts

As the cost of international route facilities—shown in Table 1—was provided by several countries, the question arises as to the usage of the

[22] *Op. cit.* note 18.
[23] *Op. cit.* note 2.
[24] By implication, this recommendation disfavors the navigational charges based on each contact.

international facilities to be distributed among the countries represented by their airlines. Therefore, in Table 3, we recorded for each country the international traffic data reported to ICAO by the airlines. And, to refer specifically to the countries which have submitted the costs of international routes to ICAO, in Table 3a, we omitted those countries where the information about the route costs is not available. By restricting the data in this way, we have still maintained in Table 3a, over 85 per cent of the grand total traffic reported to ICAO and shown in Table 3.

It may be concluded from Table 3 and 3a that for the countries with a significant amount of traffic, the traffic assessment as a percentage of the world's total does not change very much whether we refer only to the distance flown, i.e. plane-kilometers, or whether we make an allowance for the aircraft size by taking the available ton-kilometers as a basis for assessing traffic percentages. By and large, the reverse is true for those countries whose participation in international air transport is below one per cent of the world's total, as it appears that the cost allocation of route facilities on the basis of aircraft gross weight, i.e. available ton-kilometers, would favor those countries operating aircraft of a relatively small capacity. Therefore, in our proposal of cost allocation illustrated later on in Tables 4, 4a and 4b, we have chosen to refer to the available ton-kilometers flown.

If we relate the total Net Cost from Table 1 (which as we stated before could be called in a fact a subsidy) to the total amount of traffic indicated in Table 3a, we may conclude that the average net cost or subsidy per plane-kilometer and per available ton-kilometer is of the order of 5.7¢ and .93¢ respectively. It is difficult to say how these figures compare with the charges or costs imposed by private organizations of the airlines like ARINC who provide navigational facilities. A spot-check on the Vancouver-Tokyo route on the segment Vancouver-Cold Bay, with a distance of about 2,750 kilometers, where an average charge of $58.50 is collected by ARINC, indicates a rate of 2.1¢/kilometers, which is less than one-half of the average net cost or subsidy derived from Tables 1 and 3a.

The picture presented in Table 4 is self-explanatory; on the left side of the table we have grouped all the countries who provide international route facilities above the requirements of their own carriers and, conversely, on the right side, we show those countries whose carriers require more international facilities than the country's contribution to the provision of such facilities. Admittedly, the list of countries is not complete; for example, on the right side of Table 4, Switzerland is missing, which accounts for 2.34 per cent of the world's available ton-kilometers flown (see Table 3) but, whose contribution to the navigational facilities, if we consider the country's area—is likely to be lower than Norway's percentage, i.e. .81 (see Table 1).

To illustrate the derivations of the figures in Col. 3 of Table 4, let us take for an example the figure of $2·343,000 for Canada. This was obtained as a product of: (0.0982 — 0.0368) × 38,162,000, where the factors of 0.0982 and 0.0368 have been taken from Table 1 (Col. 8) and Table 3a (Col. 6) respectively. On the other hand, the figure for Belgium is shown on the right side of Table 4 as the product of (0.0147 — 0.0178) × 38,162,-000 = $118,000, has a negative sign. (The factors of 0.0147 and 0.0178 are taken from the Tables 1 and 3a, as before.)

It would be an over-simplification to say that all countries on the right hand side of Table 4 were at the Conference in opposition to the user charges, as among them was the U.K. who championed the idea that the decision about imposing user charges should be left entirely to the individual country. But looking in retrospect, the opposition to the user charges came from the group of countries shown on the right side of the table, and

conversely the advocates of the charges are grouped on the left side, despite the fact that Table 4, or its equivalent, was not presented at the Conference.

By implication, Table 4 introduces "a clearing house" idea with a built-in subsidy in kind by the Contracting States to their own airlines, with a maximum determined by the individual country's total navigational facilities provided for international air transport.

In other words, in order to reduce the global cost of navigational facilities, each country under the proposed clearing house idea would offer to the international transport cost-free an equivalent amount of route facilities as its own airlines are using in any part of the world. But some contracting States have not a sufficient amount of route facilities to render a full compensation. And to take only the deficit of such countries as a basis for assessing the route charges, is the crux of the proposed clearing house. The yearly deficit, which amounts to $18,776,000 (see Col. 4 of Table 4) if related to the international traffic of the national airlines of the States who account for it, indicates an uncompensated requirement of 3.6¢/plane-kilometer. It is interesting to note that for the Netherlands'- and the United States'- airlines, the additional requirements from other countries if related to the traffic, are of the same order; 4.5¢/plane-kilometer, which is above the average of 3.6¢ for all countries listed in Column 3. On the other hand, the U.K. airlines' additional requirement is only 1.6¢/plane-kilometer.

In the next step of our analysis which is illustrated by Table 4a, we relate the route cost to the countries which have been shown on the left side of Table 4, to the profit after income tax of the airlines belonging to the countries on the right side of Table 4. And surprisingly enough, the total profit of such carriers in 1956 was of the order of $29 million before income tax, which was more than ample to cover the adjusted costs (i.e. the costs scaled down by the usage of the country's own airlines) of $17.3 million. These results are quite contrary to the ICAO's conclusion based on the estimated global figures.

Admittedly, the coverage for the international air traffic in Table 4a is more restricted than in Table 4, as financial data for some of the airlines is not available to ICAO.

However, Table 4a accounts for 91 per cent of traffic data shown on the right side of Table 4a, which, in turn, reflects 87 per cent of the total airlines traffic (available ton kilometers flown) reported to ICAO and recorded in Table 3. Summing up, Table 4a still reflects about 79 per cent of the world's air traffic as compiled by ICAO.

Not too great emphasis should be placed on the full extent of the differences suggested by Table 4 and 4b, nor would any claim to a full comparability of the diverse sources of information, especially about the international route costs, be justified. On the other hand, any estimates about the global figures must not only carry all the errors embedded in the basic data underlying Table 4a, but must add new ones, as the airlines- and routes-cost data have to be extrapolated.

Finally, in Table 4b, an attempt was made to assess the impact on a country's economy of the "over-contribution"of international route facilities. Since we have referred to such a parameter as national income, where the figures are not fully comparable, we should consider the index in Column 4 of Table 4b as only very rudimentary and, therefore, differences between the countries' indices of the order of less than—let us say—30 to 50 per cent, cannot be considered as significant.

In our opinion—assuming that a significant cost recovery of route facilities is bound to happen in the near future—the corresponding burden that will fall on the international airlines could be lightened considerably, by

implementing the clearing house idea, as such device will shift almost one-half of the total cost of route facilities to the countries' governments in general whose carriers are active in international air transport, and in particular if these carriers are playing a leading role.

The successful implementation, however, of a clearing house presupposes three conditions:

(i) The airlines must provide initiative in the scheme, and cooperate efficiently.

(ii) The Contracting States must respond favorably to the airlines' initiative by providing information about costs and accepting suggestions in order to make their cost data comparable.

(iii) Rapid implementation of the scheme is essential, otherwise some Contracting States dismayed with the delay may impose charges at a higher level than would occur under a clearing house arrangement.

Obviously, the airlines could reduce still further the pending amount of user charges, by making constructive recommendations to the governmental agencies to save on expenses. And, in this respect, the airlines may refer to their own experience, including the experience of organizations established by them, e.g. ARINC, in operating navigational facilities and allocating costs among the users.

So much for the economic side. Now a few words for the organizational aspect of the problem.

The clearing house arrangement, of course, would not affect the ownership or operation of the navigational facilities. This would be regarded, as at present, to be a purely domestic question to be left to the decision of the individual states.

The clearing house could be sponsored within the ICAO framework by IATA, who initiated a similar facility for the airlines' accounts several years ago.

ICAO Regions in this respect would be all the more justified, than one organization on a world wide basis, because on a regional basis, the facilities of the Contracting States differ less than on a global scale, and what is even more important, there is a direct link between the providers and the users. From an accounting point-of-view, however, the overlapping boundaries of the Regions would impose some difficulties in allocating costs. In our final conclusion, we must admit that there is no political possibility of completely achieving an implementation of a clearing house on all international air routes in the whole world. But, it remains right, and realistic too, to cheer it on as far as it can go, because no useful purpose is going to be served by a request for a perfect global solution.

TABLE 1

COSTS OF ROUTE AIR NAVIGATION FACILITIES ALLOCABLE TO INTERNATIONAL AIR TRANSPORT

Source: Working Papers of ICAO Conference on Route Facilities Charges, Montreal 1958.

Notes: (1) Joint Financing Arrangements with Denmark and Iceland are excluded.

(2) Total Net Costs in Col. 8 below is the difference between Col. 6 and the revenues shown in Table 2.

(3) For interpretation of some of the figures see text.

(4) The cost of met. facilities shown in Col. 4 does not include the $13 million allocation of the jointly financed weather vessels in the North-Atlantic.

		(*Thousands of Dollars*)					
Country	*Year*	*Com. & Radio Aids and Air Traffic Control*	*Met.*	*Other Ancillary Services*	*Total Costs Gross*	*Total Costs Net*	*Percent of Total Net Costs*
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
GRAND TOTAL		28,706	9,631	1,415	41,708	38,162	100.00
Argentina	1956	N.A.	N.A.	N.A.	1,585	1,287	3.37
Australia	1956/57	1,528	363	90	1,981	1,783	4.67
Belgium	1955	413	126	22	561	561	1.47
Canada	1956/57	2,788	1,429	936	5,153	3,749	9.82
China	1956/57	204	40	—	244	244	0.64
Denmark	1956/57	635	208	—	843	843	2.21
Finland	1956	386	234	—	620	620	1.62
France—Total	1958	8,371	4,186	—	12,557	12,557	32.90
a. Metropolitan		4,943	2,343	—	7,286	7,286	19.09
b. Overseas		3,428	1,843	—	5,271	5,271	13.81
Germany	1957	2,307	732	—	3,039	3,039	7.96
Ireland	1956/57	574	198	—	772	759	2.02
Japan	1954/55	406	49	—	455	455	1.19
Lebanon	1956	N.A.	N.A.	—	104	104	0.27
Mexico(3)	1957	1,018	157	—	1,175	0	0.00
Netherlands	1956	740	184	—	925	925	2.42
Norway	1955/56	258	50	—	308	308	0.81
Philippines	1954	342	—	—	342	342	0.90
Portugal	1951	547	—	—	547	547	1.43
Sweden	1956/57	453	168	—	621	621	1.63
U. of So. Africa	1956/57	172	51	—	223	223	0.58
United Kingdom	1956/57	3,655	83	367	4,105	4,105	10.76
United States	1955	3,845	1,343	—	5,188	4,730	12.39
Uruguay	1956	64	30	—	94	94	0.25
Viet Nam	1955	—	—	—	266	266	0.70

TABLE 2

REVENUES OF ROUTE AIR NAVIGATION FACILITIES ALLOCABLE TO INTERNATIONAL AIR TRANSPORT

Source: Working Papers of ICAO Conference on Route Facilities Charges, Montreal 1958.

Notes: (1) The revenues from the facilities jointly operated by the airlines such as ARINC; IAL; SITA and CORPAC, are excluded.

(2) In Australia, the revenues are assumed as 10 per cent of the total operating cost.

(3) Canada's revenues are estimated as one-half of the trans-oceanic landing revenues plus $319,327 derived from the telecommunication charges.

(4) In the U.S., the revenues are derived from Class B messages only.

(5) No data are available about New Zealand's revenues, where an international airways' charge of $28.00/take-off is collected.

Country	*Year*	*Revenues (Thousands of Dollars)*
(1)	(2)	(3)
GRAND TOTAL		3,547
Argentina	1956	298
Australia(2)	1956/57	198
Canada(3)	1956/57	1,404
Ireland	1956/57	13
Mexico	1957	1,175
United States(4)	1956	459

TABLE 3

INTERNATIONAL AIR TRANSPORT — REVENUE TRAFFIC
Calendar Year 1956

Source: The figures in Col. 3 and 5 below have been computed by adding the data of international revenue traffic of the individual airlines as shown by International Civil Aviation Organization, Digest of Statistics No. 65, Part IV.

Country of Airlines' Registration	*Number of Registered Airlines*	*Kilometers Flown*		*Available Ton Kilometers*	
		Total (000)	*Percentage of Total*	*Total (000)*	*Percentage of Total*
(1)	(2)	(3)	(4)	(5)	(6)
			%		%
GRAND TOTAL	112	779,911	100.00	4,723,987	100.00
Argentina	1	7,246	.93	34,045	.72
Australia	1	17,116	2.20	119,113	2.52
Belgium	1	15,668	2.01	72,912	1.54
Brazil	6	12,117	1.55	73,850	1.56
Canada	2	26,434	3.39	151,086	3.20
Chili	1	1,856	.24	10,927	.23
Ceylon	1	1,431	.18	7,258	.15
China (Taiwan)	1	4,474	.57	18,430	.39
Colombia	2	5,689	.73	44,388	.94
Cuba	1	3,330	.43	31,716	.67
Czechoslovakia	1	4,272	.55	8,330	.18
Denmark	1	12,243	1.57	78,724	1.67
Egypt	1	3,168	.41	10,666	.23
Ethiopia	1	3,576	.46	12,138	.26
Finland	2	4,021	.52	15,517	.33
France	4	43,868	5.62	281,965	5.97
Germany (Fed. Rep. of)	1	9,445	1.21	71,311	1.51
Greece	1	1,500	.19	5,005	.11
Iceland	1	1,166	.15	5,631	.12
India	1	9,469	1.21	69,893	1.48
Indonesia	1	1,345	.17	5,194	.11
Iraq	1	1,760	.23	5,490	.12
Ireland	1	6,440	.83	23,256	.49
Israel	1	4,241	.54	26,447	.56
Italy	2	13,588	1.74	76,212	1.61
Japan	1	5,493	.70	33,449	.71
Lebanon	3	6,865	.88	30,115	.64
Mexico	1	2,870	.37	18,556	.39
Netherlands	1	61,847	7.93	399,669	8.46
New Zealand	1	3,234	.42	17,729	.38
Norway	1	12,243	1.57	78,724	1.67
Pakistan	1	2,544	.33	11,145	.24
Philippines	1	689	.09	2,898	.06
Portugal	4	1,710	.22	6,137	.13
Spain	2	7,382	.95	39,907	.85
Sweden	1	18,364	2.36	118,089	2.50
Switzerland	1	22,070	2.83	110,403	2.34
Thailand	1	2,212	.28	8,461	.18
Turkey	1	677	.09	1,334	.03
U. of South Africa	1	5,483	.70	37,201	.79
United Kingdom	27	125,758	16.13	655,318	13.87
United States	23	275,879	35.37	1,851,832	39.20
Uruguay	1	1,349	.17	2,612	.06
Venezuela	3	7,779	1.00	40,904	.87

TABLE 3a

INTERNATIONAL AIR TRANSPORT REVENUE TRAFFIC OF COUNTRIES RECORDED IN TABLE 1

Calendar Year 1956

Source: International Civil Aviation Organization, Digest of Statistics No. 65, Part IV.

Country of Airlines' Registration	*Number of Registered Airlines*	*Kilometers Flown*		*Available Ton Kilometers*	
		Total (000)	*Percentage of Total*	*Total (000)*	*Percentage of Total*
(1)	(2)	(3)	(4)	(5)	(6)
			%		%
GRAND TOTAL	81	665,505	100.00	4,100,959	100.00
Argentina	1	7,246	1.09	34,045	0.83
Australia	1	17,116	2.57	119,113	2.90
Belgium	1	15,668	2.35	72,912	1.78
Canada	2	26,434	3.97	151,086	3.68
China (Taiwan)	1	4,474	0.67	18,430	0.45
Denmark	1	12,243	1.84	78,724	1.92
Finland	2	4,021	0.60	15,517	0.38
France	4	43,868	6.59	281,965	6.88
Germany (Fed. Rep. of)	1	9,445	1.42	71,311	1.74
Ireland	1	6,440	0.97	23,256	0.57
Japan	1	5,493	0.83	33,449	0.82
Lebanon	3	6,865	1.03	30,115	0.73
Mexico	1	2,870	0.43	18,556	0.42
Netherlands	1	61,847	9.29	399,669	9.75
Norway	1	12,243	1.84	78,724	1.92
Philippines	2	689	0.10	2,898	0.07
Portugal	4	1,710	0.26	6,137	0.15
Sweden	1	18,364	2.76	118,089	2.88
U. of South Africa	1	5,483	0.82	37,201	0.91
United Kingdom	27	125,758	18.90	655,318	15.98
United States	23	275,879	41.45	1,851,832	45.16
Uruguay	1	1,349	0.20	2,612	0.06

TABLE 4

ADJUSTED COSTS OF INTERNATIONAL ROUTE AIR NAVIGATIONAL FACILITIES

Note: The calculations in this table are based on the data shown in Tables 1 and 3a.

Col. 2 below is the product of the positive differences of Col. 8 of Table 1, and Col. 6 of Table 3a, multiplied by the Grand Total Net Cost of $38,162,000 from Table 1.

Col. 4 below, conversely, is the product of the negative differences of Col. 8 of Table 1 and Col. 6 of Table 3a, multiplied by the Grand Total Net Cost of $38,162,000.

Some example for calculation of Col. 2 and Col. 4 are given in the text.

The discrepancy between the grand total of Col. 2 and Col. 4 is due to rounding of figures.

(*Thousands of Dollars*)

Countries who are providing more route facilities than the international requirements of their airlines	*Yearly Excess of Facilities Cost*	*Countries who are providing less route facilities than the international requirements of their airlines*	*Yearly Excess of Usage Cost*
(1)	(2)	(3)	(4)
	$		$
GRAND TOTAL	18,785		18,776
Argentina	969	Belgium	118
Australia	675	Lebanon	176
Canada	2,343	Mexico	160
China	72	Netherlands	2,797
Denmark	111	Norway	424
Finland	473	Sweden	477
France	9,930	Union of South Africa	126
Germany	2,374	United Kingdom	1,992
Ireland	553	United States	12,506
Japan	141		
Philippines	317		
Portugal	488		
Uruguay	72		
Viet Nam	267		

TABLE 4a

INTERNATIONAL AIR TRANSPORT AIRLINES FINANCIAL DATA AND ADJUSTED COSTS OF NAVIGATIONAL FACILITIES OF THE COUNTRIES SHOWN IN COL. 3 OF TABLE 4

Calendar Year 1956

Notes: Airlines Financial Data are restricted to those recorded by ICAO Digest of Statistics No. 66.

Col. 6 below is the adjusted Col. 4 of Table 4, in relation to the traffic shown in Col. 4 of this table to traffic data of Col. 5 of Table 3a.

In adding costs of the Scandinavian countries in Col. 6, Denmark's data from Table 4, Col. 2, were taken with a minus sign.

	Airlines—International Operation				*Adjusted Costs of Excess Usage of Nav. Facilities*
Country of Airlines' Registration	*Number*	*Av. Ton Kilometers 000's*	*Total Expenses*	*Profit After Income Tax*	
			Thousands of Dollars		
(1)	(2)	(3)	(4)	(5)	(6)
GRAND TOTAL1	9	3,043,231	786,111	29,035	17,287
Netherlands	1	402,080	100,474	6,061	2,814
Norway, Sweden, Denmark	1	277,719	74,459	2,027	796
United Kingdom	2	614,972	192,777	1,520	1,869
United States	15	1,748,460	418,401	19,427	11,808

TABLE 4b

INTERNATIONAL AIR TRANSPORT ADJUSTED COST OF NAVIGATIONAL FACILITIES OF THE COUNTRIES SHOWN IN COL. 1 OF TABLE 4 AND ITS RELATION TO THE NATIONAL INCOME

Calendar Year 1956

Note: Country's national income shown in Column 4 was calculated from the United Nations' Statistical Yearbook of 1957, pages 483, 484, 494-496.

Countries who are providing more route facilities than the international requirement of their airlines	*Yearly Excess of Route Facilities Cost (Thousands of Dollars)*	*National Income (Millions of Dollars)*	*Yearly Excess of Route Facilities Cost ÷ 1/1,000,000 of National Income*
(1)	(2)	(3)	(4)
Argentina	969	7,728	125
Australia	675	10,302	66
Canada	2,343	24,009	98
China	72	2,657	27
Denmark	111	3,690	30
Finland	473	3,773	125
France	9,930	39,971	248
Germany	2,374	35,000	68
Ireland	553	1,285	430
Japan	141	20,631	68
Philippines	317	4,168	76
Portugal	488	1,694	288

INTERNATIONAL LEGISLATION ON AIR NAVIGATION OVER THE HIGH SEAS

BY DR. JEAN CARROZ[1]
Formerly ICAO Legal Officer

ARTICLE 12 of the Convention on International Civil Aviation signed at Chicago on 7 December 1944 gives somewhat unobstrusively, in its third sentence, broad legislative powers on air navigation over the high seas to the Organization set up by the Convention. It reads as follows:

> "Rules of the Air
> "Each Contracting State undertakes to adopt measures to insure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. Each Contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each Contracting State undertakes to insure the prosecution of all persons violating the regulations applicable."[2]

In contrast with the generally non-binding character of the technical legislation adopted pursuant to the Convention, the rules applicable over the high seas are to be complied with by civil aircraft of Contracting States without possible deviations. As the Annexes to the Convention embodying technical rules are adopted by the Council of the International Civil Aviation Organization (ICAO) by a vote of two-thirds of its members[3] and in principle become effective within three months after their submission to the Contracting States, unless in the meantime a majority of the Contracting States register their disapproval with the Council, the provision on the high seas is a rare example of International legislation by majority decision. It appears worthwhile, in view of its unique character, to consider the numerous and interesting problems of interpretation it raises. They will be examined hereunder in the light of the restrained and wise exercise by the Council of ICAO of its legislative powers to date.

Preparatory work on Article 12 of the Chicago Convention

In view of the delphic vagueness of Article 12 in certain respects, it is not superfluous to explore in some detail the preparatory work on this provision.

When it convened at Chicago on November 1, 1944, the International Civil Aviation Conference had before it two drafts of an International Air Convention, submitted by the United States of America and Canada respectively. Of the two drafts, only the Canadian one included a provision in any way similar to present Article 12. It was numbered Article XXXII, and reproduced Article 25 of the International Convention relating to the Regulation of Aerial Navigation signed at Paris on 13 October 1919:

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[1] The opinions expressed herein are the personal views of the writer.

[2] The Chicago Convention does not provide expressly for the freedom of flight over the high seas. This rule of customary law has recently been embodied for the first time in an international convention by the United Nations Conference on the Law of the Sea, held at Geneva from 24 February to 27 April 1958. See Article 2 of the Convention on the High Seas adopted by the Conference on 27 April 1958.

[3] The Council of ICAO is composed of twenty-one Contracting States nominated from the seventy-three States members of the Organization (as of 15 August 1958).

> "Each member State undertakes to adopt measures to ensure that every aircraft flying above the limits of its territory and that every aircraft wherever it may be carrying its nationality mark, shall comply with the regulations contained in Annex . . .
>
> "Each of the member States undertakes to ensure the prosecution and punishment of all persons contravening these regulations."[4]

Article XXXII did not contain a special provision concerning the rules in force over the high seas, since the Canadian draft was based upon the assumption that an Annex to the Convention referred to, having the same effect and coming into force at the same time as the Convention itself,[5] would embody rules for air traffic applicable without possible deviations over the high seas, as in the Paris Convention. In fact, Article 25 of that Convention provided for compliance with the regulations contained in Annex D, entitled "Rules as to lights and signals, Rules for air traffic." In principle, departures from Annexes to the Paris Convention were not authorized. However, paragraph 53 of Annex D stated that none of its provisions was to be considered as preventing a State, even by way of derogation from the rules of the said Annex, from establishing special regulations relative to the navigation of aircraft within its territory, in the vicinity of aerodromes or in other places, provided that such regulations were duly published and communicated to the International Commission for Air Navigation and that they were justified in each case by exceptional circumstances. The authorization to depart from the rules of Annex D was restricted to the territory of the member States, so that such rules were to be complied with over the high seas without possible deviation.

When the Steering Committee of Committee I (Multilateral Aviation Convention and International Aeronautical Body) of the Chicago Conference allocated the provisions of the above-mentioned draft Conventions among the three Subcommittees of Committee I, Article XXXII of the Canadian draft was not assigned for consideration to any of these Subcommittees.[6]

Article XXXII, however, was taken up again at the suggestion of Sir Frederick Tymms,[7] in the following circumstances: at its sixth meeting, held on November 15, Subcommittee 2 (Air Navigation Principles) of Committee I considered Articles 24 and 25 of the United States draft, dealing respectively with the powers of the Council of ICAO and the avoidance of conflict between State regulations and rules established by the Council. A suggestion that there should be a definite reference in the Convention to the basis of authority for each of the Annexes was referred to the Drafting Committee, of which Sir Frederick Tymms was a member. On that date, it was already clear that, although considerable progress had been made in the development of technical Annexes, it would not be possible for the Conference to adopt them in final form for attachment to the proposed Convention.[8] Furthermore, the need was recognized for the utmost flexibility in the adoption and amend-

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[4] Proceedings of the International Civil Aviation Conference, Department of State, Publication 2820, [hereafter called Proceedings], Vol. I, p. 585.

[5] The draft included a provision identical to Article 39 of the Paris Convention, reading as follows:

"Article XLV:

The provisions of the present Convention are completed by the Annexes . . . which shall have the same effect and shall come into force at the same time as the Convention itself."

[6] Proceedings, Vol. I, pp. 648, 677, 679, 698.

[7] Proceedings, Vol. II, p. 1383.

[8] On November 12, the Steering Committee of Committee II (Technical Standards and Procedures) had adopted the text of a resolution to the effect that the drafts of Annexes should be accepted by the Conference upon the basis that they would be accepted by the participating States for immediate and continuing study and as constituting models of the desirable scope and arrangement of the several Annexes. This resolution was adopted by Committee II on November 18 and by the Conference on December 5, 1944.

ment of Annexes with the necessary consequence that the constitutional requirements of the States would have to be met by some flexible procedure.[9] The Drafting Committee prepared and submitted in a document[10] a set of articles exclusively dealing with or related to the legal status of Annexes. Article XXXII of the Canadian draft reappeared in this document as Article 11A of a proposed Part I—Air Navigation—of a complete Convention on International Civil Aviation. It had undergone substantial changes and was worded:

> "Rules of the Air, etc.
>
> "Each Contracting State undertakes to adopt measures to ensure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever it may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force, and to keep its own regulations uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each Contracting State undertakes to ensure the prosecution of all persons violating the regulations applicable."

The main changes introduced, namely the provision concerning rules in force over the high seas and the undertaking by each Contracting State to keep its regulations uniform, to the greatest possible extent, with those established under the Chicago Convention and to ensure that its aircraft, wherever they might be, would comply with the rules there in force, were due to the new and original legal status formulated in the Convention of the Annexes thereto. Since the Annexes were no longer to have the same effect or come into force at the same time as the Convention itself, and since it would be possible for States to adopt within their own territories[11] regulations or practices differing in any particular respect from those established in the Convention,[12] it was necessary, in the interest of air navigation safety, to ensure that the same rules would apply over a given area. In view of the absence of sovereignty over the high seas, it had proved indispensable to prescribe, as in the case of the Paris Convention, that the civil aircraft of all Contracting States should, when flying over the high seas, abide by the same rules without any possible deviation.

Article 11A reappeared, unchanged, as Article 12 of the Proposed Convention on International Civil Aviation[13] approved by Committee I at its plenary session on 4 December 1944.[14]

In the Convention itself, certain changes of form were made. "Whenever it may be" was changed to "wherever such aircraft may be." After "aircraft there in force," there was placed a full stop. Before "uniform," the phrase "in these respects" was inserted. It should also be noted that the word "etc." is omitted in the Convention from the title of the Article.

The body of ICAO responsible for establishing rules applicable over the high seas

Article 12 of the Chicago Convention merely prescribes that the rules in

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[9] See Statement by Dr. Warner in Proceedings, Vol. I, p. 92.

[10] Document 443 (Second Supplement to its second Interim Report). See Proceedings, Vol. I, p. 668.

[11] Pursuant to Article 2 of the Convention, "the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State."

[12] Contracting States are held to give immediate notification to the International Civil Aviation Organization of the differences between their own practice and that established by an international standard. Cf. Article 38 of the Convention.

[13] Proceedings, Vol. I, Doc. 454, p. 616.

[14] *Ibid.* p. 548.

force over the high seas shall be those established under the Convention and does not specify what body of ICAO[15] is to establish such rules.

The basic provision of the Chicago Convention dealing with the establishment of rules on air navigation is to be found in Article 37. That Article provides that, with a view to facilitating and improving air navigation, the "International Civil Aviation Organization" shall adopt and amend from time to time international standards and recommended practices and procedures dealing with various matters enumerated therein.

Other provisions of the Convention demonstrate that the Council of ICAO is the proper and exclusive body for establishing such rules and, consequently, the rules referred to in Article 12. Article 49, which enumerates the powers and duties of the Assembly, does not refer to rule-making, except for the rules of procedure of the Assembly itself. Paragraph (k) of that Article, which establishes the overriding power of the Assembly, exempts explicitly from its jurisdiction matters "specifically assigned to the Council." Among such matters is the power to adopt international standards, recommended practices and procedures vested in the Council, as one of its mandatory functions, by Article 54, paragraph (1). The Council is further instructed to designate them, for convenience, as Annexes to the Convention. The procedure for the adoption and amendment of Annexes is set forth in Article 90. Once an Annex has been adopted by a vote of two-thirds of the Council at a meeting called for that purpose, it is submitted to each Contracting State and becomes effective within three months thereafter, unless in the meantime a majority of the Contracting States register their disapproval with the Council.

It thus results that Article 12 should be read in conjunction with Articles 37, 54(1) and 90 and that the Council alone, subject to observance of the procedures set forth in Article 90, has jurisdiction to establish rules referred to in Article 12. This interpretation, based upon the general philosophy of the Convention, is confirmed by the preparatory work on that Article at the Chicago Conference. It will be recalled that Article 12, which originated as Article XXXII of the Canadian draft, was at first left aside, but it was later taken up again and amended by the Drafting Committee of Committee I when it prepared, in a special document, a set of provisions exclusively dealing with or related to the legal status and the implementation of the Annexes. Article XXXII, renumbered Article 11A, appeared as the first provision of this document. The relationship of that Article to the Annexes is further underscored by the changes made in Article XXXII. All the modifications were due to the fact that the Annexes were not to have the status envisaged implicitly by that Article, as already explained above.

In practice, the Council has recognized, in connection with the adoption of Annex 2 to the Convention (Rules of the Air), that it was the department

[15] The wording of Article 12 indicates clearly that the Organization is to exercise its legislative power over the high seas to the exclusion of individual Contracting States. No State is competent to require compliance with certain rules by a foreign aircraft when flying over the high seas. Failure on the part of the Organization to take appropriate action would not allow Contracting States to impose any such rules repugnant to international law, thus moreover constituting a serious hazard in view of the possible differences in national regulations.

The status of the American and Canadian Air Defense Identification Zones and the question as to whether they are consistent with the Chicago Convention are examined by John T. Murchison in his book The Contiguous Air Space Zone in International Law, Ottawa, 1955. But see particularly the excellent review of said book in the JOURNAL OF AIR LAW AND COMMERCE, Vol. 24, 1957, No. 3, pp. 372-375, where the reviewer submits "that to the extent the security rules may be in direct conflict with the rules of the air laid down by ICAO they are violative of the provisions of the Convention, notwithstanding the difference in purpose of the regulations concerned." The absence of protests on the part of other States should however be pointed out.

of ICAO entrusted with the establishment of the rules referred to in Article 12. It may be mentioned that when the Council was considering the adoption of the Rules of the Air Annex, a Representative stated that the Council should confine its action to the adoption of the Annex and that the interpretation of Article 12 insofar as it applied to the Rules of the Air was a subject for Assembly consideration.[16] However, this suggestion, which was rejected, was not intended to refer the matter to the Assembly, as a rule-making body, but rather as a forum where Contracting States could make known their views on the interpretation of Article 12.

As the rules referred to in the third sentence of Article 12 are among those assigned to the Council as part of its mandatory function, it is apparent that the Council cannot delegate its authority in the matter. This question was presented in connection with the adoption of Annex 11 to the Convention (Air Traffic Services), the purpose of which, together with Annex 2, was to ensure that flying over international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.[17] As it was realized that some standards in the Annex did constitute rules relating to the flight and maneuver of aircraft, the suggestion was made that those standards should be mandatory over the high seas. But the Council shared the point of view of the Air Navigation Commission, which had felt that a State deviating from certain provisions of the Annex should be able to continue to do so while providing air traffic services over the high seas or in airspace of undetermined sovereignty; otherwise, such State would have two sets of air traffic services regulations, one applicable to the airspace above its own territory, the other to the airspace over the high seas and areas of undetermined sovereignty where it provides air traffic control services.[18] It was also feared that States might be deterred from supplying much needed services over the high seas if the standards were made mandatory in these areas. Accordingly, the Council decided to insert the following clause in the Foreword to the Annex:

> "The standards and recommended practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a Contracting State within Air Traffic Services are provided and also wherever a Contracting State accepts the responsibility of providing Air Traffic Services over the high seas or in airspace of undetermined sovereignty. A Contracting State accepting such responsibility may apply the standards and recommended practices in a manner consistent with that adopted for airspace under its jurisdiction."

It thus results that the Contracting State concerned will determine in the last resort the rules covered by Annex 11 to be applied over the high seas. Insofar as these rules relate to the flight and maneuver of aircraft, it is questionable whether such a procedure is in conformity with Article 12.

Determination of the rules applicable over the high seas by reason of their substance

The third sentence of Article 12 does not give any specification as to the substance of the rules established under the Convention which are applicable over the high seas. Do they comprise all rules established under the Convention which are capable of application over the high seas, or solely the rules of the air, as suggested by the title of the Article, or more specifically the rules relating to the flight and maneuver of aircraft, as it would appear from the first two sentences of Article 12? There can be little doubt that this last interpretation is the correct one.

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[16] ICAO Doc. 5701, C/672, para. 306.

[17] See Annex 11, Third Edition, September 1956, p. 3. The adoption of that Annex will be examined under other aspects in the following sections.

[18] ICAO Doc. 7037-2, C/814-2, para. 77 ff.

In its original form, as Article XXXII of the Canadian draft, the provision was intended to contain a specific reference to the Annex which would replace Annex D to the Paris Convention entitled "Rules as to lights and signals, Rules for air traffic." However, it was necessary to replace this provision by a descriptive phrase and to avoid making reference to any particular Annex, when it became clear that a different approach from the one adopted in the Paris Convention was to govern the Annexes to the Chicago Convention, and that it would not be possible for the Conference to adopt the Annexes in final form.

It appears clearly from the construction of Article 12 that the intention of its draftsmen was to deal with the same kind of rules.[19] The provision first imposes compliance with the "rules and regulations relating to the flight and maneuver of aircraft" in force over the territory of each Contracting State. It then seeks to secure uniformity in regulations applicable over these territories by urging States to avoid departing from the rules established under the Convention in these respects, after which, quite logically, it prescribes that these rules shall apply uniformly over areas not subject to the sovereignty of any State. It results from this logical development that the rules referred to are meant to be the same throughout the article, namely those "relating to the flight and maneuver of aircraft."

A broader interpretation that the "rules in force over the high seas" include all rules established under the Chicago Convention, provided that they can be applied over such areas, would not be justified. It would be contrary to proper principles of interpretation to isolate the third sentence of Article 12 from its context which should be read as a whole, particularly since the provision has not been sub-divided into paragraphs.

As to an interpretation based upon the title of Article 12, "Rules of the Air,"[20] so as to restrict the rules referred to in the third sentence to such rules it may be pointed out that the title of a provision can be used for the purpose of interpreting its contents only if it helps reveal the true intent. In this particular case, it would obscure rather than clarify the issue. It may appear to be raising a straw man to suggest that the "rules of the air" can have a limiting effect on "rules relating to the flight and maneuver of aircraft," since the later expression is no doubt more descriptive and more precise than the former. However, this point is important for the following reason: the ICAO Council on April 15, 1948 adopted Annex 2 to the Chicago Convention entitled "Rules of the Air" and decided that the Annex constituted rules relating to the flight and maneuver of aircraft within the meaning of Article 12 of the Convention. Since it is the only instance so far in which the Council has made such a decision, it could be argued that the rules referred to in the third sentence of Article 12 are limited to those contained in Annex 2. Although there has been no formal ruling on this point, it appears from the discussions held in connection with the adoption of Annexes 2 and 11 to the Convention that, in the Council's opinion, the "rules relating to the flight and maneuver of aircraft" are not confined to those set forth in Annex 2.[21]

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[19] It will be observed that Article 12 uses indifferently the expression "rules" and "regulations," or a combination of both. Such variation might easily be the consequence of hasty drafting, as the Article was not considered in detail at the Chicago Conference, except as stated above. There seems to be little doubt that the intention was to make Article 12 applicable to any provision of a regulatory and binding character, e.g. a statute or an administrative decree, with which aircraft must comply.

[20] As stated above in the section dealing with the preparatory work on Article 12, Article XXXII of the Canadian draft taken up and amended by the Drafting Committee I was first entitled "Rules of the Air, etc." The word "etc." was later omitted, presumably because it would have been inartistic.

[21] See particularly ICAO Doc. 7037-2, C/814-2, para. 81.

The exact determination and the sorting out of the rules according to their substance will depend on the interpretation given to the words "relating to the flight and maneuver of aircraft."[22] The first method of interpreting which comes to mind is to compare the rules referred to in Articale 12 to the rules of the road. This would probably narrow these rules to the shortest set. But a broader view could be taken and it might be argued that all rules imposed upon airmen which affect the conduct of the flight relate to flight and maneuver. It should, however, not be forgotten that the underlying purpose of Article 12 is to ensure the uniform application of rules considered as essential for the safety of air navigation.

Determination of the rules applicable over the high seas by reason of their status as "standards," "practices," procedures, etc.

Article 12 refers to the "*rules* established under this Convention." An examination of the provisions of the Convention relating to the rule-making power of the Council shows that only the adoption of Annexes is provided for. As the Council also approves sets of "Procedures" (which are not adopted as Annexes) to be followed in air navigation operations, it should be considered whether such Procedures are "established under the Convention" and, if so, whether they are "rules" and may thus be regarded as mandatory over the high seas insofar as they relate to the flight and maneuver of aircraft.

Moreover, while there is no doubt that Annexes are established under the Convention, the division of their contents into international standards and recommended practices makes it necessary to examine whether both kinds of provisions have the status of "rules" and should be fully complied with over the high seas if they relate to the flight and maneuver of aircraft.

These questions will be considered successively hereunder:

1 *Procedures for Air Navigation Services and Supplementary Procedures*

Although the Convention does not specifically provide for techincal legislation other than "Annexes," the Council of ICAO has been approving Procedures for Air Navigation Services for world-wide application and regional Supplementary Procedures.[23]

The development and particular status of such Procedures stem from practical necessities. As explained in an ICAO document,[24] the Procedures for Air Navigation Services comprise, for the most part, operating procedures regarded as not yet having attained a sufficient degree of maturity

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[22] With regard to the respective power of the Contracting States and of the Council to interpret these words, see hereafter the section entitled "Determination of the rules applicable over the high seas by reason of their enactment."

[23] For an historical summary of the development of these Procedures, see ICAO Doc. AN-WP/386; for the text of the Procedures presently in effect, see ICAO Doc. 4444-RAC/501/6 (Rules of the Air and Air Traffic Services), Doc. 7181-COM/546/3 (Radiotelephony), Doc. 7458-OPS/610/2 (Holding and Approach-to-land), Doc. 7605-MET/526/2 (Meteorology) and Doc. 7030 (Regional Supplementary Procedures).

Mention could also be made of the Air Navigation Plans the purpose of which is to set forth in detail the facilities, services and procedures required for international air navigation within the eight ICAO regions (African-Indian Ocean, South East Asia, Middle East, European-Mediterranean, North Atlantic, Caribbean, South American/South Atlantic and Pacific regions). The rules of procedure and directives for regional air navigation meetings state that a regional plan shall be in accord with the standards and recommended practices and procedures of ICAO. See Doc. 7214-C/831/1, p. 11.

[24] Directives to ICAO technical meetings and rules of procedure for their conduct, Doc. 7689 (May 1956), Part IV, Section 2, p. 20.

for adoption as international standards or recommended practices,[25] as well as material of a more permanent character which is considered too detailed for incorporation in an Annex[26] or is liable to be frequently amended, for which the processes of the Convention would be too cumbersome. The latter reason points to the essential difference in the processing of Annexes and Procedures. Whereas the Annexes are "adopted" by the Council pursuant to Article 90 of the Convention, namely by a two-third majority[27] vote at a meeting called for that purpose, the Procedures and amendments thereto are merely "approved" by a majority vote. It should also be noted that while an amendment to an Annex is subject to the full application of Article 90, which involves a certain lapse of time before the amendment can become effective, a more flexible and expeditious procedure is followed in the case of amendments to Procedures.

What is the status of the Procedures? It is certain that they are not contemplated by the Convention. As Sir Frederick Tymms stated at a meeting of the Council, in reply to a Representative who "wondered" what the term procedures in Article 38 meant, the Procedures for Air Navigation Services and the Supplementary Procedures had never been thought of when the Chicago Convention was drafted. The authors of the Convention had only envisaged international standards and recommended practices embracing a variety of material, including specifications for equipment, procedures (e.g. for communications and air traffic control) and practices.[28] That explains the link already stressed between the Annexes and the rules "established under the Convention" referred to in Article 12.

It a strict construction of the Convention were to be advocated, particular emphasis could be put on the lack of any explicit provision, among those dealing with the mandatory or permissive functions of the Council and more specifically with its rule-making power, which would authorize the approval of Procedures. The formality attendant upon the adoption of Annexes and the exclusive procedure provided for the adoption of technical legislation could be recalled and the conclusion might be offered that the Procedures are not established under the Convention and thus cannot come within the ambit of Article 12.

On the other hand, we can assert that a useful purpose is served by not including the Procedures in Annexes, and the principle of effectiveness may be invoked to uphold the imaginative method which was followed in process-

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[25] For instance, the Foreward to the Procedures for Air Navigation Services —Meteorology (ICAO Doc. 7605-MET/526/2) contains the following statement:

"Whilst the Procedures for Air Navigation Services may contain material which may eventually become standards or recommended practices when it has reached the maturity and stability necessary for adoption as such."

At its Fourth Session, the Assembly of ICAO adopted Resolution A4-7 in which it resolves "that the Council ensure that Procedures for Air Navigation Services are incorporated in the appropriate Annexes to the Convention as soon as these Procedures have become sufficiently stable."

[26] The first Procedures were developed at the Regional Air Navigation Meetings held in Dublin (March 1946) and Paris (April-May 1946) because the international standards and recommended practices formulated by the technical Divisions of the PICAO Air Navigation Committee on the basis of the draft Annexes adopted by the Chicago Conference did not include detailed procedures for air navigation services on international air routes.

[27] At the 22nd meeting of its Third Session, the Council decided that amendments to the Annexes should be carried or lost by a simple majority of those present and voting. The Representative of the United States had rightly pointed out that the adoption of an amendment should require the same majority as the document itself. Cf. ICAO Doc. 7310-C/846, p. 27 and Doc. 5701, C/672, p. 12. The Council, however, never applied this decision and it would appear that it is now discarded.At the 17th meeting of the Seventeenth Session, an amendment which failed to receive the concurring votes of two-thirds of the total membership of the Council was declared to be lost. Cf. ICAO Doc. 7328-17, C/853-17, p. 195. See also Doc. 7328-12, C/853-12, p. 130.

[28] ICAO Doc. 7057-12, C/817-12, p. 166.

ing the Procedures. There would be much to be said in favor of the application of this principle, nothwithstanding the fear that it could lead to practical necessities taking precedence over serious legal objections, brushed aside as if *de minimis*. At any rate, it is unnecessary to debate this point since the Procedures, even if considered as established under the Convention, are not intended to be "rules" and therefore do not constitute provisions of a *regulatory* nature within the meaning of Article 12. The Council of ICAO has never asserted that the Procedures were similar to Annexes. On the contrary, the Foreword to the Procedures points out that their status differs from that of the Annexes[29] and that the Procedures are merely "recommended to Contracting States for application."[30] In one instance, the Council only approved their issuance as a general guide to be applied to the fullest practicable extent, and indicated that the use of the term "shall" in the text did not mean that the provisions concerned were intended to be mandatory.[31]

The status of the Procedures would be altogether different if they were incorporated by reference in the standards themselves.[32] The relevant Procedures would thereby acquire the same status as the standards. But they could then only be amended in the same manner as international standards.

2 *International standards and recommended practices*

While there is no doubt that the Annexes are "established under this Convention," it remains to be considered whether both sets of provisions which they may embody, namely international standards and recommended practices, are to be considered as "rules" within the meaning of Article 12.[33]

The Convention does not define "standards" or "recommended practices," nor does it give any specification as to their respective legal standing. This was perhaps unnecessary, as these terms are self-explanatory to a large extent. A standard implies a compliance requirement and in principle is regulatory in character. A recommended practice, on the other hand, is not aimed at imposing an obligation but is designed to serve as a useful guide, which should be followed so far as practicable. Since a rule and a recommendation are certainly mutually exclusive, it follows that only "standards" can be regarded as "rules established" under the Convention. A closer scrutiny of the Convention seems to confirm this tentative conclusion.

It should first be noted that when the Drafting Committee at Chicago developed the articles relating to Annexes, Chapter VI of the Convention was provisionally entitled "International air regulations, minimum standards and recommended practices,"[34] this indicates an intended distinction between

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[29] As to the notification of differences or departures, the Council has agreed that the Procedures do not have the status accorded international standards adopted an Annexes to the Convention and, therefore, do not come within the obligations imposed by Article 38 of the Convention to notify differences in the event of non-implementation. Nevertheless, the Council considers it desirable (as it does in the case of recommended practices) that differences between the Procedures and national regulations and practices be notified to the Organization and invites States to do so. See discussions on this subject in ICAO Doc. 7057-4, C/817-4, p. 54. See also Assembly Resolution A4-7.

[30] ICAO Doc. 7605-MET/526/2, p. 8, para. 3; Doc. 4444-RAC/501/6, p. iii, para. 3.

[31] ICAO Doc. 7458-OPS/610/2, p. 3, para. 2.

[32] This is not the case in practice. The Directives to ICAO technical meetings and rules of procedure for their conduct provide that the text of a standard must not depend upon or include references to material of lower status. Cf. ICAO Doc. 7689, p. 17.

[33] As already pointed out in connection with the preparatory work on Article 12, this Article originated as Article XXXII of the Canadian draft which reproduced verbatim Article 25 of the Paris Convention. Article 25 referred to the provisions contained in an Annex and used the expression "regulations," as the Annexes to the Paris Convention embodied only one kind of provisions, having in principle the same effect as the Convention itself.

[34] Proceedings, Vol. I, p. 659, Doc. 414.

regulatory provisions and mere recommendations. The difference in this regard between "standards" and "recommended practices" was no doubt fully understood by the Conference. Thus, the report of Committee II (Technical standards and procedures) contains the following remarks:

> "A particular problem of status is that of recommended practices. The Committee believes that in certain branches of regulatory action some subjects should be fully standardized, while upon others the internationally agreed documents should present only recommendations implying no obligation, but expressive of a hope that the several nations will follow the recommendation as closely as may be practicable under their particular circumstances. It is believed that in the future development of the technical documents considerable freedom should be exercised in the introduction of such recommendations, some of which may thereafter become international standards if they gain a sufficient degree of acceptance during the probationary period of mere recommendation."[35]

Another strong indication to the same effect is given by the terminology used in the Convention, where the words "established" or "prescribed" on the one hand and "recommended" on the other hand appear to have been carefully picked to contrast the respective force of the provisions to be adopted by the Organization.[36] It is submitted that provisions which are "established" or "prescribed correspond to "standards" and those which are "recommended" bear the hallmark of "recommended practices." Thus, the "rules established under this Convention" referred to in Article 12 can only be "international standards." It might be pointed out in this connection that the two other Articles of the Convention which also require full compliance with the provisions adopted by the Organization, also refer to provisions "established" and "prescribed" under the Convention.[37]

It is again apparent, from the measures, heretofor taken by ICAO with regard to international standards and recommended practices, that only the former may reasonably be considered "rules" established under the Convention.

At its First Session, the Assembly noted that it was necessary that the Contracting States have a uniform understanding of their obligations under the Convention with respect to international standards and recommended practices to be adopted and amended from time to time by the Council, and it defined them as follows:

> "'Standard': any specification for physical characteristics, configuration, material, performance, personnel or procedure, the uniform application of which is recognized as necessary for the safety or regularity of international air navigation and to which Member States will conform in accordance with the Convention; in the event of impossibility of compliance, notification to the Council is compulsory under Article 38 of the Convention."
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> "'Recommended practice': any specification for physical characteristics, configuration, material, performance, personnel or procedure, the uniform application of which is recognized as desirable in the interest of

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[35] Proceedings, Vol. I, p. 708.

[36] The following expressions are used: "regulations . . . established under this Convention" (Article 12); "rules . . . established under this Convention" (Article 12); "practices . . . established or recommended . . . pursuant to this Convention" (Article 23); "co-ordinated measures . . . recommended . . . pursuant to this Convention" (Article 25); "procedure . . . recommended by the International Civil Aviation Organization" (Article 26); "standards and practices recommended or established . . . pursuant to this Convention" (Article 28(a)); "practices and rules recommended or established . . . pursuant to this Convention" (Article 28(b)); "standards . . . recommended [sic] or established . . . pursuant to this Convention" (Article 28(c)); "minimum standards . . . established . . . pursuant to this Convention" (Article 33); "forms . . . prescribed . . . pursuant to this Convention" (Article 34).

[37] Cf. Article 33 on certificates of airworthiness, certificates of competency and licenses, and Article 34 on journey log books.

> safety, regularity, or efficiency of international air navigation, and to which Member States will endeavor to conform in accordance with the Convention."[38]

To emphasize the different legal status of standards and recommended practices, particularly the difference between "conform" and "endeavor to comply," the Directives to ICAO technical meetings provide that a standard must contain a main statement specifying an obligation by means of "shall" and that, in a recommended practice, "should" is to be used instead of "shall."[39]

The distinction between standards and recommended practices was not made expressly when the Council discussed the question of the application of Annex 2 and Annex 11 over the high seas, though some Representatives referred exclusively to standards. In the special clause adopted in connection with Annex 2, the Council stated that "the Rules of the Air Annex" constituted rules relating to the flight and maneuver of aircraft within the meaning of Article 12 of the Convention and that deviations from "these rules" were not authorized insofar as they related to flight over the high seas.[40] This all-inclusive treatment was due perhaps to the presence in the Annex of two recommended practices not susceptible to direct application over the high seas. It should be noted that the present text of Annex 2 no longer contains recommended practices.

It is difficult to see how Article 12 as worded could possibly purport to change the legal status of the provisions adopted under the Convention and to metamorphose recommendations into rules. This Article, it would appear, concerns only standards, and its effect is to prohibit departures therefrom which otherwise are permissible over the territory of Contracting States provided a notification is filled with ICAO.

Determination of the rules applicable over the high seas by reason of their enactment

Article 12 merely provides that the rules relating to the flight and maneuver of aircraft in force over the high seas shall be those established under the Convention. It imposes no requirement or procedure additional to those prescribed for the adoption of any technical Annex. Nor does it provide for any particular method of enactment by which those rules would be made applicable without exception over the area concerned. On the contrary, this results automatically from the third sentence of the Article, read in conjunction with the second one, that Contracting States undertake to keep their own regulations in these respects uniform with those established under the Convention.[41]

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[38] Resolution A1-31.

[39] ICAO Doc. 7689, p. 17.

[40] ICAO Doc. 5701, C/672, pp. 57-60.

[41] The principle "pacta tertiis nec nocent nec prosunt" will apply with regard to non-contracting States. This traditional rule taken from the law of contracts prevails in practice, although there is a trend in the doctrine towards recognition of a special force to law-making treaties with respect to third parties. As to the often quoted statement of the International Court of Justice that "fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognized by them alone, together with capacity to bring international claims" (Reparations for injuries suffered in the service of the United Nations, Advisory opinion: I.C.J. Reports, 1949, p. 185), it does not suggest in any way that non-contracting States are to be bound by the rules laid down by the Contracting States, however numerous they may be. It may be added that the Chicago Convention does not contain a provision similar to Article 2(6) of the Charter of the United Nations, under which ICAO would ensure that non-member States act in accordance with certain principles so far as may be necessary for the safety of air navigation. But those States will no doubt be inclined in fact to observe, for safety considerations, the rules established under the Convention.

However, it might be argued that the mere fact that the standards relate to the flight and maneuver of aircraft is not sufficient to make them applicable over the high seas, because an involuntary act of legislation cannot be imputed to the Council. Therefore—so the argument goes—some specific act on the part of this Council is required. However, Article 12 is quite explicit on this point, and it must be assumed that the Council knowingly adopts rules which relate to the flight and maneuver of aircraft.[42]

From the policy point of view Contracting States might object to a specific act of the Council on the ground that it would amount in fact to a determination that certain standards did or did not constitute rules relating to the flight and maneuver of aircraft. Possibly such an action could lead to a *de facto* amendment of the Convention, either by restricting or by extending the rules referred to in Article 12. Obviously the rules adopted pursuant to the Convention either relate or do not relate to the flight and maneuver of aircraft. If they do—and that particular feature does not depend upon a decision of the Council—[43] their application is mandatory over the high seas without possible deviation. Should Contracting States disagree on the character of certain rules, the Council might be called upon to act as a judicial body in a specific case, since the Convention empowers it to decide any disagreement between two or more Contracting States relating to the interpretation or application of its provisions and its Annexes.[44]

While a special enactment does not seem to be necessary to make the rules referred to in Article 12 applicable over the high seas, it is of course open to the Council to express its own view as to whether certain standards constitute rules relating to the flight and maneuver of aircraft and to remind the Contracting States, in a special clause, of their obligation under Article 12. Such a clause might even appear desirable, as the lack of any action on the part of the Council might create a serious hazard in view of the possible differences of national interpretation. But the usefulness of measures of this kind would largely depend on their being exhaustive. The safety of air navigation would perhaps be better served by collecting in one place all rules to be applied without deviation over the high seas.

So far, the Council has had two occasions to consider whether special action was required under Article 12 in connection with the establishment of rules applicable over the high seas.

The first instance occurred when the Council adopted Annex 2 to the Convention (Rules of the Air).[45] One Representative suggested that the Annex should contain a clause making it clear that deviations therefrom were not permissible insofar as they related to flights over the high seas. Another Representative, as already mentioned in another context, stated that the interpretation of Article 12 insofar as it applied to the Rules of the Air was a subject for Assembly consideration. It was also observed that the suggested clause was unnecessary, since the provisions of Article 12 were explicit. The Council finally decided to include in the resolution of adoption "a clause calling attention to the special character of Annex 2 and its relation to Article 12 of the Convention."[46] Clearly, this decision was nothing more than the expression of the Council's own opinion that Annex 2

[42] If a rule relating to the flight and maneuver of aircraft should be such that its application over the high seas would be of doubtful value, the Council could specifically limit its validity to the airspace above the territory of the Contracting States.

[43] A different view was held by the Chief of the Legal Bureau when the Council was discussing Annex 11 (Air Traffic Services) in this connexion. He stated that "the rules and regulations relating to the flight and maneuver of aircraft were any rules that the Council designated as such." Cf. ICAO Doc. 7037-2, C/814-2, para. 81.

[44] Article 84 of the Convention.

[45] ICAO Doc. 5701, C/672, pp. 57-60.

[46] *Ibid.*, para. 318.

contained rules relating to the flight and maneuver of aircraft, accompanied by a reminded to Contracting States of their obligations with respect to such rules under Article 12. But the Council was in no way implying that, in the absence of such expression of opinion, Annex 2 would not have been applicable over the high seas. Thus, to carry out the Council's decision, the following clause was suggested:

> "That pursuant to Article 12 of the Convention, deviations from the Rules of the Air established under the Convention may not be made insofar as they relate to flight over the high seas."

Another Representative expressed concern at a specific reference to the filing of deviations, and it was suggested not to include such reference but to indicate instead that in the opinion of the Council the Rules of the Air were rules relating to the flight and maneuver of aircraft within the meaning of Article 12. The author of the original suggestion insisted that his purpose was to make it clear to Contracting States that they could not deviate from the Rules of the Air over the high seas. The Council then adopted a text based on the two suggestions combined as follows:

> "That the Rules of the Air Annex constitute rules relating to the flight and maneuver of aircraft within the meaning of Artcile 12 of the Convention and deviations from these rules may not be made insofar as they relate to flight over the high seas."[47]

Although the underlying purpose of that clause is evident from the above-mentioned decision and from the discussions which preceded the adoption of the clause, the final wording may convey the idea that the Council had chosen to make a formal ruling and that in the absence of such action it cannot be deemed to have enacted rules applicable over the high seas.[48]

The situation is more complex with regard to the second occasion the Council passed on this question—when it adopted Annex 11 to the Convention (Air Traffic Services).[49] Several Representatives undobtedly realized that at least some of the rules contained in this Annex indeed related to the flight and maneuver of aircraft,[50] and in debate it was questioned whether

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[47] ICAO Doc. 5701, C/672, pp. 57-60, para. 332.

[48] Even if the decision of the Council is merely the expression of its own view on the special character of certain rules, it no doubt carries a great weight in practice.

ICAO drew the attention of the Contracting States to the special clause adopted by the Council and enquired on what date they had the intention to put the provisions of Annex 2 into force over the high seas pursuant to Article 12 of the Chicago Convention. A few States have adopted specific provisions to ensure compliance with Annex 2 over the high seas. Thus Australia (Air Navigation Regulations: "4A. When an Australian aircraft is flying over the high seas, the provisions of Annex 2 to the Convention shall apply to and in relation to that aircraft and that flight in substitution for the corresponding provisions of these Regulations relating to the flight and maneuver of aircraft."), Canada (The Air Regulations, Part V—Rules of the Air—Division I: "500. All Canadian aircraft in flight over the high seas shall comply with the Rules of the Air contained in Annex 2 to the Convention as amended from time to time.") and the United States of America (Civil Air Regulations, Part 60—Air Traffic Rules, para. 60.1 a: "Operation over the high seas. Aircraft of United States registry operated in air commerce shall while over the high seas comply with the provisions of Annex 2 (Rules of the Air) to the Convention on International Civil Aviation.") Furthermore, a certain number of States have adopted Annex 2 without deviations, so that aircraft of their registry comply fully with the rules of said Annex while over the high seas (See Index, Supplement to Annex 2, Third Edition, p. 3).

By way of contrast, it may be mentioned that no State appears to have singled out, from all the rules established by the Council, those which it considers as relating to the flight and maneuver of aircraft within the meaning of Article 12.

[49] ICAO Doc. 7037-2, C/814-2, paras. 75-85.

[50] Reference may be made to the fact that the first draft of Annex 11 had formed the second part of the PICAO recommendations for standards, practices and procedures—Rules of the Air and Air Traffic Control (Doc. 2010 RAC/104) and were separated therefrom during the discussion of Annex 2. Cf. ICAO Doc. 5701, C/672, p. 60.

there was any reason why the Air Traffic Services standards should not be mandatory over the high seas or in airspace of undetermined sovereignty. However, as already mentioned in connection with Council delegation of its rule-making power over these areas, it was feared that a specific decision of the Council on the question of whether Annex II was in the same category an Annex 2 might deter States from supplying useful services over the high seas. The Council therefore refrained from taking a firm position on this point, and authorized Contracting States providing air traffic control services over the high seas or in airspace of undetermined sovereignty to apply Annex 11 in a manner consistent with that adopted for airspace under their jurisdiction. It thus appears that the Council recognized in this instance that no part of the Annex could be considered "rules and regulations relating to the flight and maneuver of aircraft." It can also be said—and this point was expressly made—that to give Contracting States a freedom of action which Article 12 excludes would imply that the Air Traffic Services are not rules and regulations relating to the flight and maneuver of aircraft within the meaning of Article 12. However, it would be unrealistic to speculate on all the possible implications of the Council's decision. It should suffice to observe that if Annex 11 contains rules relating to the flight and maneuver of aircraft, it is legally questionable to ignore this fact and allow deviations.

Sanctions

The last sentence of Article 12, following immediately the provision relating to the application of uniform rules over the high seas, states that "each Contracting State undertakes to insure the prosecution of all persons violating the regulations applicable."

What is to be understood by the words "each Contracting State?" Do they refer only to the State of registry of the offending aircraft or also to the State of registry of the complainant aircraft? Is it possible to hold that under the terms of the last sentence of Article 12 a person violating the rules in force over the high seas is liable to prosecution by any Contracting State, thus suggesting that a breach of these rules should be equated with an act of piracy?

As Article 25 of the Paris Convention similarly provided that each of the Member States undertakes "to ensure the prosecution and punishment of all persons contravening these regulations,"[51] it might be of interest to compare the measures taken with respect to that provision. The International Commission for Air Navigation referred to its Legal Sub-Commission, for study and report, the question of the prosecution contemplated in Article 25, as well as in paragraph 16 of Annex H (Customs) which held the State in which an aircraft was registered and to which there was reported an infringement committeed by such aircraft in respect of the regulations of the said Annex, to suspend either for a limited time or permanently the certificate of registration of the offending aircraft. In its report, the Sub-Commission concluded that these provisions aimed at the infliction by a State of penalties for infringements committed outside its territory[52] and that it behooved the Contracting States to adopt the necessary legislative or administrative measures to give effect to those provisions.[53] The Commission instructed thereupon its Secretary General to send a note to all Contracting States

[51] Article 25 referred to the regulations contained in Annex D wherefrom Member States could derogate under certain conditions within their territory, but not over the high seas.

[52] No mention was made of the obligation of each Member State "to adopt measures to ensure that every aircraft flying over the limits of its territory . . . shall comply with the regulations contained in Annex D."

[53] International Commission for Air Navigation, Official Bulletin, No. 1, pp. 22-23.

calling their attention to the desirabilility of taking the necessary legislative or administrative measures.

Insofar as the violations committed over the high seas are concerned,[54] Article 12 does not seem to present any difficulty. It results from the first sentence thereof that each Contracting State is to ensure on the one hand that within its territory all aircraft shall comply with its rules and regulations relating to the flight and maneuver of aircraft and on the other hand that outside its territory the aircraft carrying its nationality mark shall comply with the rules and regulations in force wherever such aircraft may be. As no State may claim territorial sovereignty over the high seas or the airspace above, the obligation to insure compliance with the rules there in force can only rest with each Contracting State with respect to the aircraft carrying its nationality mark. The rules in force over the high seas being those established under the Chicago Convention, they are supposedly implemented in national laws and regulations. Thus, the obligation of each Contracting State to insure the prosecution of all persons violating the regulations applicable concerns only the violation of its own regulations by aircraft carrying its own nationality mark.[55]

In practice, the normal procedure will be for the pilot-in-command of the complainant aircraft to address a report to his employer. If the violation so warrants, the operator of the aircraft will then report to the aeronautical authorities of his own State, who may, if they deem it necessary, address the aeronautical authorities of the Contracting State where the offending aircraft is registered.

Article 12 does not prescribe the sanctions to be applied in case of noncompliance with the rules applicable. A survey of the penalties established by Contracting States with respect to breaches of what is generally known as rules of the air shows an evident lack of uniformity. There are great differences in the amount of fines to be imposed. Some States spell out the penalties on the basis of providing an unusually large maximum penalty against the owner or operator and a lighter penalty by way of a fine against the pilot or pilot-in-command. The pilots are often faced with a prison term. Perhaps, here again, ICAO could be instrumental in achieving an adequate uniform scale of penalties.

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[54] It would exceed the scope of this article to examine whether the State of registry of an aircraft which has committed a violation of the rules in force over the territory of another State is under an obligation to prosecute such an aircraft for a breach of foreign laws and regulations. See ICAO Assembly Resolutions A1-30 and A2-45.

[55] Since the aircraft of all Contracting States are to comply with the same rules when flying over the high seas, it would appear that the obligation of each Contracting State provided for in the last sentence of Article 12 does not preclude the State of registry of the complainant aircraft from taking disciplinary or other action if it is materially feasible and subject to the application of the rule non bis in idem.

GOVERNMENTAL TORT LIABILITY FOR OPERATION OF AIRPORTS

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THE general problem of governmental tort liability, especially municipal tort liability, is one that has long vexed the courts.[1] As indicated by a substantial number of recent cases, the law of governmental tort liability for operation of airports is no exception. Most airports are municipally owned and operated, and most of the cases involve municipalities; thus it is necessary to focus primarily on these governmental bodies. The fact situation in "municipal airport" cases usually follows a basic pattern—a municipality owns and operates an airport; as a result of the negligence of an agent or employee of the municipality, plaintiff is personally injured or his property (usually an airplane) is damaged.[2]

The liability of a municipality depends on whether the activity out of which the injury arose was governmental or public on the one hand or proprietary, private, or corporate on the other hand.[3] Liability is not imposed if the function is governmental or public, that is, where the act is performed for the common good. On the other hand, if the function is deemed to be private or proprietary, that is, for the special benefit of the municipal corporation or the people who compose it, then the municipality is liable in tort to the same extent as a private corporation would be under like circumstances.[4]

The courts have applied the governmental-proprietary test in determining whether or not municipalities are liable for torts committed in the operation of airports. The overwhelming majority of the cases hold that, in the absence of any statute on the point, an airport is a proprietary, private, and corporate function, and that the municipality may be liable for torts in connection therewith.[5]

This rule, laid down in the earlier airport cases decided in the 1930's, is

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[1] A 1788 case, Russell v. Men of Devon, 100 Eng. Rep. 359. 2 Term Rep. 667, 16 East, 305, is generally considered the landmark case.

[2] E.g., Stocker v. Nashville, 174 Tenn. 483, 126 S.W. 2d 339 (1939); Brasier v. Cribbett, 166 Neb. 145, 88 N.W. 2d 235 (1958); Christopher v. El Paso, 98 S.W. 2d 394 (Tex. Civ. App. 1936) *error dism'd.*

[3] One court has cautiously suggested a test for distinguishing governmental and proprietary functions in this manner: "In determining whether activities of a municipal corporation are governmental or proprietary, it is proper to consider whether the activity is primarily for the advantage of the *state as a whole* or for the *special local benefit* of the community involved, and to further consider whether such activity is in performance of a *duty imposed* upon the municipality by the sovereign power, or is in the exercise of a *permissive privilege* given by the sovereign power, *but such tests are not conclusive* to determine the capacity in which the city's activities are conducted." Wendler v. City of Great Bend, 181 Kan. 753, 316 P. 2d 265, 266 (1957).

[4] See Annot., 120 *A.L.R.* 1376 (1939) for a representative collection of authorities on this subject. One excellent, scholarly article cited is Borchard, *Governmental Liability in Tort*, 34 Yale L. J. 1129, 143, 229 (1924); 36 Yale L. J. 757, 1039 (1927).

[5] City of Mobile v. Lartigue, 23 Ala. App. 479, 127 So. 257 (1930); Coleman v. City of Oakland, 110 Cal. App. 715, 295 Pac. 59 (1930); Peavey v. Miami, 146 Fla. 629, 1 So. 2d 614, (1941); Mollencop v. City of Salem, 139 Ore. 137, 8 P. 2d 783; Notes and Comments, *The Liability of a Municipality for Operation and Maintenance of an Airport*, 32 Cornell L. Q. 272 (1946); Annot., 138 A.L.R. 126 (1942). For a like holding involving a county, see Daniels v. County of Allegheny, 145 F. Supp. 358 (W.D. Pa. 1956).

now often quoted. In justifying the classification of an airport as a proprietary function, the courts have analogized airports to other proprietary functions. One case compared an airport to a railway station or a bus terminal, and considered it to be essentially a part of the city's system of transportation facilities.[6] The same case suggested that airports, being graded landing and taking off places for airplanes, are like streets which are graded surfaces traversed by land vehicles.[7] And, since the work done by a city in building, repairing, and maintaining streets is a proprietary function, by analogy an airport is a proprietary function. Furthermore, it was held that a proprietary function does not lose its character as such because the operations of that function are not profitable.

An airport has been held to fall naturally into the same classification as such public utilities as electric light, gas, and water systems, all of which are generally considered to be proprietary functions.[8] One court compared an airport, with its beacons, landing fields, runways and hangars, to a harbor with its lights, wharves, and docks. The one is a landing place and haven of ships that navigate the water, the other of those that navigate the air.[9] Thus, the courts, arguing by analogy, have drawn airports into the proprietary classification of municipal activities.

Where there is no statute bearing on the point, the common law rule that airports are proprietary functions prevails, and the municipality is held liable for its torts arising from the operation of the airport.[10] Some states, however, have passed statutes concerning municipal tort liability in the operation of airports and it is in the construction and interpretation of these laws that the courts have reached divergent results.

Usually these statutes are patterned in part on the Uniform Airports Act[11] and generally fall into two broad classifications, which for convenience are herein referred to as "Type I" and "Type II." Section 2 of the Uniform Act provides the language for the first type of statute. It reads:

> *Airports a Public Purpose*—Any lands acquired, owned, leased, controlled, or occupied by such counties, municipalities or other political subdivisions for the purpose or purposes enumerated in Section 1[12] of this act, shall

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[6] City of Mobile v. Lartigue, 23 Ala. App. 479, 127 So. 257, 260 (1930).

[7] *Ibid.*

[8] Coleman v. City of Oakland, 110 Cal. App. 715, 295 Pac. 59, 61 (1930).

[9] Dysart v. St. Louis, 321 Mo. 514, 11 S.W. 2d 1045, 1049 (1928). This case presented the question of whether an airport is a governmental or proprietary function in a different setting—whether a city had the power to issue bonds for the purpose of acquiring an airport.

[10] See note 5, *supra.*

[11] This law was adopted by the National Conference of Commissioners on Uniform State Laws and the American Bar Association at Los Angeles, in July 1935. In 1943, the act was withdrawn pending further study by the Commissioners. Since then, variations of it have been adopted in numerous states. The act has sometimes been referred to as the Municipal Airports Act. It is set out in its original form in 6 J. Air L. & Com. 589 (1935). Generally the act has been used as a model for those states enacting an airport law, but provisions vary considerably from state to state.

[12] Section 1 of the act reads:

> *Municipalities May Acquire Airports*—Municipalities, counties, and other political subdivisions of this state are hereby authorized, separately or jointly, to acquire, establish, construct, expand, own, lease, control, equip, improve, maintain, operate, regulate, and police airports and landing fields for the use of aircraft, either within or without the geographical limits of such municipalities, counties and other political subdivisions, and may use for such purpose or purposes any available property that is now or may at any time hereafter be owned or controlled by such municipalities, counties, or other political subdivisions; but no county shall exercise the authority hereby conferred outside of its geographical limits except in an adjoining county and this only jointly with such adjoining county.

and are hereby declared to be acquired, owned, leased, controlled, or occupied for *public, governmental and municipal purposes.*[13]

This type of statute will be referred to as a "Type I" statute.

The second type of statute, herein referred to as Type II, contains a statement similar to the one found in Type I, to the effect that airports owned by municipalities shall be considered a public, governmental, and municipal purpose. In addition, however, the Type II statute contains a specific statement that no action shall be brought against any municipality on account of any act done in maintaining, operating or managing any municipal airport.[14] Thus, the difference between the Type I and Type II statute is that the latter provides an *express* exemption from liability whereas the former does not.

In construing the Type I statutes, the courts have reached two different conclusions. One view is that the statute should be construed as an attempt by the legislature to declare the city immune from liability by making airports a governmental function.[15] The other courts indicate that the statute really does not attempt to alter the common law, and that all the legislature sought to do was to declare that an airport is a public and governmental *purpose* in which a city is authorized to engage.[16] In other

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[13] Italics by author. An example of a state statute patterned on § 2 of the Uniform Act is *N.C. Gen. Stat.* § 63-50 (1950);

Airports a public purpose.—The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports and other air navigation facilities, and the exercise of any other powers herein granted to municipalities, are hereby declared to be public, governmental and municipal functions exercised for a public purpose and matters of public necessity, and such lands and other property, easements and privileges acquired and used by such municipalities in the manner and for the purposes enumerated in this article, shall and are hereby declared to be acquired and used for public, governmental and municipal purposes and as matter of public necessity.

Other states having this type of statute, referred to as a Type I statute, include: *W. Va. Code Ann.* § 2786 (10) (1955); *Tex. Rev. Civ. Stat.* art. 46d-15 (1948); *Ga. Code Ann.* § 11-202 (1949); *Ark. Stat. Ann.* § 74-615 (1957); *Utah Code Ann.* § 2-2-4 (1953); *Nev. Rev. Stat.* § 496.250 (1) (1955), but see also (3) of the same section.

[14] An example of a "Type II" statute is *Tenn. Code Ann.* § 42-310 (1955):

Operation of airports declared governmental function—Suits against municipality barred.—The construction, maintenance, and operation of municipal airports is declared a public governmental function, and no action or suit shall be brought or maintained against any municipality, or its officers, agents, servants, or employees, in or about the construction, maintenance, operation, superintendence, or management of any municipal airport.

Other states having this type of statute include: *Neb. Rev. Stat.* §§ 3-206-207 (1954); *Mont. Rev. Codes Ann.* § 1-822, § 1-502; *N. H. Rev. Stat. Ann.* § 422.17 (1955); *Tex. Rev. Civ. Stat. Ann.* art. 1269 h, § 3 (1948), declared unconstitutional in Christopher v. El Paso, 98 S.W. 2d 394 (Tex. Civ. App. 1936). See also *Iowa Code Ann.* § 330.15 (1949).

[15] City of Corsicana v. Wren, — Tex. —, 317 S.W. 2d 516 (1958), *rehearing denied;* Kirksey v. City of Ft. Smith, 227 Ark. 630, 300 S.W. 2d 257 (1957); Van Gilder v. City of Morgantown, 136 W. Va. 831, 68 S.E. 2d 746 (1949); Imperial Production Corp. v. City of Sweetwater, 210 F. 2d 917 (5th Cir. 1954); Mayor, etc. of Savannah v. Lyons, 54 Ga. App. 661, 189 S.E. 63 (1936).

[16] Rhodes v. City of Asheville, 230 N.C. 134, 52 S.E. 2d 371, (1949), *rehearing denied,* 230 N.C. 759, 53 S.E. 2d 313 (1949); Wren v. City of Corsicana, 309 S.W. 2d 102 (Tex. Civ. App. 1957), rev'd — Tex. —, 317 S.W. 2d 516 (1958); Caroway v. Atlanta, 85 Ga. App. 792, 70 S.E. 2d 126 (1952); Van Gilder v. City of Morgantown 136 W. Va. 831, 838, 68 S.E. 2d 746, 750 (1949) (dissenting opinion, 1952); City of Corsicana v. Wren, — Tex. —, 317 S.W. 2d 516, 523 (1958) (dissenting opinion).

words, the purpose of the statute is merely to permit a city to operate an airport.

The courts which interpret the statute as declaring the city immune from liability find that the plain meaning of the statute is that airports are governmental functions; immunity then follows as a matter of course.[17]

At first glance, it must be admitted that this latter interpretation appears logical, perhaps so plainly so that no justification is needed therefor. However, a closer reading of the Type I statute suggests a different interpretation. It can be argued that the language really does no more than to authorize a municipality to acquire and operate an airport.[18] The heading of the uniform statute, *"Airports a Public Purpose,"* supports this construction. Furthermore, in the 1920's and 1930's, when airports began to be developed in great numbers, there was a genuine question as to whether municipalities had the authority to operate an airport.[19] No doubt several of the earlier statutes were passed with the idea of declaring airports to be a public purpose, so as to settle, once and for all, the question of whether a municipality had the *authority* to operate an airport.

The words of the Uniform Act state that "(a)ny lands acquired . . . for the . . . purposes enumerated [operating, maintaining, constructing airports] . . . are hereby declared to be acquired . . . for *public, governmental and municipal purposes.*"[20] The italicized portion of the statute suggests that the term "governmental" is used in its ordinary non-technical meaning, that is, not as a word of art—the converse of "proprietary," but rather as

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[17] E.g., Mayor, etc. of Savannah v. Lyons, 54 Ga. App. 661, 189 S.E. 63, 66 (1936): "It is clear that this legislation vested the airports of the state with the character of governmental institutions."

[18] E.g., Rhodes v. City of Asheville, 230 N.C. 134, 52 S.E. 2d 371, 375 (1949); Caroway v. Atlanta, 85 Ga. App. 792, 70 S.E. 2d 126, 130 (1952). See also cases cited in note 15, *supra.*

[19] In the late '20's, several cases were decided which held that a municipality was authorized to operate an airport. For an excellent study of earlier decisions on this question, see Rhyne, Airports and the Courts 20-29 (1944). Dysart v. St. Louis, 321 Mo. 514, 11 S.W. 2d 1045, 1047 (1928) involved a suit brought to prevent the city from issuing bonds payable from tax funds, for the purpose of developing an airport. A portion of this decision is quoted in Rhyne, *op. cit. supra* at 21, wherein plaintiff attacking the bond issue as for a "private" rather than a "public" purpose had said:

> "It will afford a starting and landing place for a few wealthy, ultra-reckless persons, who own planes and who are engaged in private pleasure flying. . . . It will afford a starting and landing place for pleasure tourists from other cities, alighting in St. Louis while flitting here and yon. It will offer a passenger station for the very few persons who are able to afford, and who desire to experience, the thrill of a novel and expensive mode of luxurious transportation.
>
> "The number of persons using the airports will be about equal to the total number of persons who engage in big-game hunting, trips to the African wilderness, and voyages of North Pole Exploration. . . .
>
> "In the very nature of things, the vast majority of the inhabitants of the city a 99 per cent majority, cannot now, and never can, reap any benefit from the existence of an airport.
>
> "True it may be permitted to the ordinary common variety of citizen to enter the airport free of charge, so that he may press his face against some restricting barrier, and sunburn his throat gazing at his more fortunate compatriots as they sportingly navigate the empyrean blue.
>
> "But beyond that, beyond the right to hungrily look on, the ordinary citizen gets no benefit from the taxes he is forced to pay."

The foresighted court rejected plaintiff's contention, and held the airport to be a public purpose.

[20] Similar wording is used in *W. Va. Code Ann.* § 2786 (10) (1955); *N.C. Gen. Stat.* § 63-50 (1950), quoted in full note 13, *supra; Ga. Code Ann.* § 11-202 (1949).

a synonym for "public" and "municipal," and is in no way intended to shield the municipality from liability.[21]

As a general proposition, the view which holds that the statute does not exempt the city from liability appears to be more sound. In the last analysis, however, the problem is one of ascertaining legislative intent. If it should somehow be determined that the legislature did intend to exempt the city from liability, then the question is raised as to whether such a law is constitutional. This problem is germane to both the Type I and Type II statutes, and will be discussed in connection with the Type II statute.

In construing the Type II statute, the problem of ascertaining what the legislature intended does not arise, since the statute expressly grants the municipality immunity from liability.[22] The main issue is whether or not the statute is constitutional; on this question there has been a division of opinion.[23] As regards municipal tort liability in general, as opposed to municipal tort liability for airports in particular, a majority of cases uphold the constitutionality of a statute relieving the municipality from liability.[24]

Christopher v. City of El Paso,[25] a Texas Court of Civil Appeals case, was the first decision involving a test of the constitutionality of a Type II statute.[26] Though the city was held not liable because it was not negligent, the court nevertheless went into the question of constitutionality and held the act unconstitutional. The court said,[27] "That such a statute contravenes the equal protection clause of the Fourteenth Amendment to our Federal Constitution,"[28] and "(t)hat the provision violates the due process clause of our own [Texas] Constitution. . . ."

The reasoning behind the equal protection clause argument runs along these lines: It is settled at common law that airports are proprietary functions; a municipality acting in a proprietary capacity is treated as a private corporation; therefore, exempting municipal corporations from liability would be favoring part of a class, in that private corporations are not afforded a like benefit, and thus there is a violation of the equal protection clause of the Constitution.

The second argument relies primarily on the due process clause of the Texas Constitution.[29] A right to sue a municipality for a tort committed by its employee or agent is a vested right at common law; when the legislature

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[21] The italicized words in the statute (italics by author) suggest other redundancies used by lawyers to cover contingencies, although the words are in a sense synonymous, e.g., "right, title, and interest," or "give, bequeath, and devise."

[22] A typical Type II statute is set forth in footnote 14, *supra*, and discussed in the text at that point.

[23] See note 14, *supra*, for an example of a Type II statute. Cases which have upheld the constitutionality of Type II statutes include Stocker v. City of Nashville, 174 Tenn. 483, 126 S.W. 2d 339 (1939); Holland v Western Airlines, 154 F. Supp. 457 (D. Mont. 1957); Opinion of the Justices, — N.H. —, 134 A. 2d 279 (1957). Cases declaring the Type II statute unconstitutional include Christopher v. El Paso, 98 S.W. 2d 394 (Tex. Civ. App. 1936), *error dism'd;* Brasier v. Cribbett, 166 Neb. 145, 88 N.W. 2d 235 (1958). See also Abbott v. Des Moines (constitutional), 230 Iowa 494, 298 N.W. 649 (1941) and compare Brown v. Sioux City, 242 Iowa 1196, 49 N.W. 2d 853 (1951).

[24] 38 Am. Jur., *Municipal Corporations*, §§ 574, 593 (1941); Annot., 124 A.L.R. 350 (1940).

[25] 98 S.W. 2d 394 (Tex. Civ. App. 1936) *error dism'd.* Here, plaintiff was injured while observing a stunt show held at the airport when a cyclist drove his motorcycle through a burning fence and struck him. Liability was urged because the city was negligent in failing to adopt rules for the protection of invitees.

[26] *Tex. Rev. Civ. Stat. Ann.* art. 1269 h, § 3 (1948).

[27] 98 S.W. 2d 394, 396.

[28] U.S. Const. amend. XIV, § 1. ". . . (No State shall) . . . deny to any person within its jurisdiction the equal protection of the laws."

[29] Tex. Const. art. I, § 19. "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised except by the due course of the law of the land."

passes a statute depriving an injured person of this cause of action, it has denied him due process of law.

There is an additional argument, closely related to the due process idea, which the Texas court did not mention. This theory relies on a provision found in many state constitutions which assures an injured person his day in court.[30] Such a provision is interpreted as forbidding the legislature from arbitrarily abolishing or unreasonably restricting causes of action well established and well defined in the common law, among which are claims against cities for negligent performance of proprietary functions.[31]

In 1939, three years after the *Christopher* case, the constitutionality of a Type II statute was tested in *Stocker v. City of Nashville*.[32] Plaintiff advanced the same arguments that were made in the *Christopher* case. But the Tennessee court refused to follow the Texas decision and upheld the constitutionality of the Tennessee law. It distinguished the Tennessee statute from the Texas statute on the ground that the latter did not expressly declare as does the former that a municipal airport was "a public governmental function." This does not appear to be a satisfactory ground for distinction. The Tennessee court sidesteps the conflict by saying that "it (Christopher) is not in point here."[33]

The later cases follow either the *Christopher* or *Stocker* view. In these cases, as well as in cases involving Type I statutes, the courts have considered another point of controversy; that is, whether or not the *determination* of liability or non-liability of a municipality for certain acts is a "judicial" or a "legislative" question. Those cases which hold that the extent to which immunity from liability for torts of a municipality shall be preserved or waived is a purely legislative question uphold the constitutionality of the statute.[34] Cases holding that the question of immunity is a judicial question declare the statute unconstitutional.[35]

One court,[36] attempting to justify its position that this is a legislative question, has said (a) "To be sure, courts may adjudge that a horse is still

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[30] E.g., Tex. Const. art. I, § 13 (in part): "All courts shall be open, and every person for an injury done to him, in his lands, goods, person, or reputation, shall have remedy by due course of law."

[31] See Lebohm v. City of Galveston, 275 S.W. 2d 951 (1954); 33 Texas L. Rev. 1099 (1955).

[32] 174 Tenn. 483, 126 S.W. 2d 339 (1939). Plaintiff alleged that while walking along a path on airport grounds, she struck against a wire stretched along a grass plot close to the path, about six inches high, and was thrown to the ground and injured. Besides asserting that the statute in question was unconstitutional, plaintiff also sought to recover on a theory of nuisance. The court disposed of this argument briefly stating that such a precautionary provision (wire) is a matter of common practice and a recognized method of protection under such conditions. The statute construed was the present day *Tenn. Code Ann.* § 42-310 (1955), which is quoted note 14, *supra*.

[33] 126 S.W. 2d 339, 341 (1939). Criticism of the Stocker case may be found in 10 J. Air L. & Com. 422 (1939); 10 Air L. Rev. 310 (1939). See note 32, *supra*, for a brief statement of the facts in the Stocker case.

[34] Opinion of the Justices, — N.H. —, 134 A. 2d 279, 281 (1957); Holland v. Western Airlines, 154 F. Supp. 457, 460 (D. Mont. 1957); City of Corsicana v. Wren, — Tex. —, 317 S.W. 2d 516, 519-20 (1958).

[35] Rhodes v. City of Asheville, 230 N.C. 759, 53 S.E. 2d 313 (1949); Brasier v. Cribbett, 166 Neb. 145, 88 N.W. 235 (1958).

[36] City of Corsicana v. Wren, — Tex. —, 317 S.W. 2d 516 (1958). Texas has provided a fertile area in the field of municipal airport tort liability. After Christopher v. El Paso, 98 S.W. 2d 394 (1936) held a Type II statute unconstitutional, a Type I statute was enacted in 1947. This was held valid in Imperial Production Corp. v. City of Sweetwater, 210 F. 2d 917 (5th Cir. 1954). Subsequently, Wren v. City of Corsicana, 309 S.W. 2d 102 (1957) decided that the statute did not intend to exempt a city from liability. This decision was reversed in City of Corsicana v. Wren, — Tex. —, 317 S.W. 2d 516, with three judges dissenting. The latter case purports to overrule Christopher v. El Paso, *supra*, on the question of constitutionality of a Type II statute, though a Type I statute is involved in the Corsicana Case.

a horse even when the legislature has called it a cow; (b) but if science should produce some doubtful animal resembling both, are judges necessarily better qualified than the legislature to say whether it is a horse or a cow?"[37] The court goes on to say that the legislature has an understanding of life and government quite as broad as that of the courts, and that in areas of *doubt,* such as classifying airports as a governmental or proprietary function, legislative classification of activities as governmental or proprietary ought to be respected by the court.

It is to be noticed that the court set out two rules; one applies if there is no doubt as to classification, and the second applies if there is doubt. Though the rules may well be sound, it appears that the court applied the wrong rule, for the common law left no doubt that airports are proprietary functions in absence of statute. Using the court's analogy, it is evident that airports are clearly "horses," i.e., proprietary functions under the common law,[38] and are not "doubtful new animals resembling both" (horses and cows).

On the basis of this analysis, query whether the court reached an incorrect result. The basic idea that the legislature has no power to arbitrarily change a clearly proprietary function into a governmental function is relied on by many of the cases which impose liability. Thus, a case from the same jurisdiction as *Christopher v. City of El Paso* which purports to overrule it may be said actually to strengthen it.

There is one argument which is applicable only to the Type I statute, since this type is ambiguous and is capable of two possible interpretations. That is, it can be construed either as an exemption from liability or merely as an authorization to operate an airport. Serious doubts have been raised as to whether the legislature can constitutionally exempt a municipality from airport tort liability. It is a cardinal principle that the court will first ascertain whether a construction of the statute is fairly possible by which the constitutional question may be avoided.[39] Thus, to avoid the constitutional question in interpreting the statute in question here, it would be necessary to construe the law as a mere authorization to operate an airport.

As one would suspect, the greatest number of cases dealing with airport tort liability involve municipalities, since most airports are municipally owned. However, some cases exist which involve other governmental bodies. In *Woodmansee v. Connecticut,*[40] it was held that the Connecticut Aeronautics Commission was an arm of the state government and under the doctrine of sovereign immunity would not be liable in suits arising out of its authorized functions, whether proprietary or governmental. There was no statute involved in the case.

As to the liability of counties, one Nevada case, *Granite Oil Securities v. Douglas County,*[41] rejected the contention that the county is an arm of the state and found liability.

The problem of liability of the United States for federally-owned airports involves a consideration of the Federal Tort Claims Act. That act

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[37] City of Corsicana v. Wren, *supra* note 34.

[38] "We have found no decision, and the appellants have cited none, in which any Court of last resort in this country, has held that the construction, operation, and maintenance of any airport by a municipality is a governmental function and that municipalities may not be held liable in tort for the negligent operation thereof, except where they have been expressly exempted from such liability of statute." Rhodes v. City of Asheville, 230 N.C. 134, 52 S.E. 2d 371, 375 (1949), *rehearing denied,* 230 N.C. 759, 53 S.E. 2d 313 (1949). Virtually the identical remark was made in Wendler v. City of Great Bend, 181 Kan. 753, 316 P. 2d 265, 272 (1957).

[39] Crowell v. Benson, 285 U.S. 22, 62 (1932).

[40] 18 Conn. Super. 370 (1953). Here, plaintiff slipped and was injured by falling on some snow and ice on airport grounds.

[41] 67 Nev. 388, 219 P. 2d 191 (1950).

purports to waive, with certain specified exceptions, the federal government's sovereign immunity from suits for torts committed by federal employees. There is language in the act which presents a problem of interpretation. This reads, "The United States shall be liable . . . to tort claims, in the same manner and to the same extent as a private individual under like circumstances . . ."[42] The question is whether on the one hand the "governmental-proprietary" distinction is retained in the FTCA, thus immunizing the federal government from liability for torts committed by its agents in the performance of governmental functions, or whether on the other hand the act sought to abolish the distinction entirely so that liability would not depend on arbitrary pigeonholing of activities as governmental or proprietary. It would appear that the United States Supreme Court in *Indian Towing Co. v. United States*[43] rejected the governmental-proprietary distinction as applied to the FTCA.[44] To the same effect is *Rayonier v. United States*.[45]

The federal problem has arisen in at least two airport cases, *Air Transport Associates v. United States*,[46] and *United States v. Union Trust Co.*[47] Both cases involved federally-owned airports.[48] In both cases, the court rejected the idea that the FTCA incorporated the governmental-proprietary distinction, and thus, the airports were not granted immunity from liability.[49]

But even if the FTCA were construed as adopting some sort of governmental-proprietary distinction, it is submitted that the federal government could still be held liable for torts committed in connection with airports. This is because historically airports at common law are considered as proprietary functions, from which tort liability flows.[50]

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[42] 62 Stat. 483 (1948), 28 U.S.C. § 2674 (1952).

[43] 350 U.S. 61 (1955).

[44] In this case, Coast Guard negligence in letting a lighthouse light go out resulted in plaintiff's tug being grounded and damaged. The court stated at page 65: ". . . (T)he Government in effect reads the statute as imposing liability in the same manner as if it were a Municipal Corporation . . . it would thus push the courts into the 'non-governmental-governmental' quagmire that has long plagued the law of Municipal Corporations. . . . The Federal Tort Claims Act cuts the ground from under that doctrine; it is not self-defeating by covertly embedding the casuistries of municipal liability for torts." But see Notes, *Federal Government Liability "As a Private Person" Under the Tort Claims Act*, 33 Ind. L. J. 339 (1958).

[45] 352 U.S. 315, 319-20 (1957).

[46] 221 F. 2d 467 (9th Cir. 1955). The Court rejected the government's contention that in order for there to be jurisdiction in the District Court of a claim against the government under the FTCA, the government must be equated to a private individual under 28 U.S.C. § 2674. In other words, the government contended that because a private individual cannot operate a military air base, as was being operated by the government here, the government cannot be equated to a private individual and hence jurisdiction does not lie. The court dealt with this point by saying that the accident did not arise because of the military character of the airbase and private persons do operate airports, and therefore the requirements of § 2674 were met.

[47] 221 F. 2d 62 (D.C. Cir. 1955), *aff'd per curiam*, 350 U.S. 907 (1955).

[48] In the Air Transport Associates Case 221 F. 2d 467 (9th Cir. 1955), the airport was an Alaska airfield operated by the federal government as an Air Force Base. The airfield was made available as a landing field for commercial planes paying compensation therefor. Plaintiff was a commercial user of the airport who suffered damages as a result of the negligent operation of the airfield. The Union Trust Co. case held the government liable for a tragic mid-air collision between a passenger plane and another plane as a result of the negligence of the tower operators at a controlled, federally owned, public airport.

[49] 221 F. 2d 467, 470 (9th Cir. 1955); 221 F. 2d 62, 73-78 (D.C. Cir. 1955).

[50] See note 5, *supra*.

In the area of governmental airports other than municipal airports, that is, state, county and federal airports, the rules of liability are well defined. Yet these rules must be accepted with caution. At the present, the cases decided are too few in number to permit an accurate forecast of what rule of liability will ultimately prevail. Different holdings may well arise in the future. As an illustration, one need only look at the early municipal airport cases, where liability was regularly imposed and contrast these with the later cases, complicated by the passage of statutes.

Having examined the law as it exists, it would now be appropriate to inquire as to what the policy of the law should be. Certainly it is a well-known and generally accepted fact that the modern trend is more and more toward holding municipalities responsible for their torts. And the courts generally express approval at the trend, although they are often reluctant to impose liability where none existed before.

One policy argument often advanced is that the loss from a large tort claim would bankrupt a small municipality. But one may ask why the imposition of liability is upheld for such operations as public transportation where the liability is potentially as great. Certainly the financial risk could be entrusted to an insurance company by the purchase of liability insurance.[51] There is an old and still valid argument that it is more equitable to spread the cost of calamities over the population as a whole rather than make an injured plaintiff suffer a great loss individually. A non-liability statute naturally discourages the exercise of great care. A responsible airport is likely to receive greater use and revenue than one which is immune from liability.

Conclusion

Under the common law, as we have seen, it is well settled that municipalities are responsible for torts committed in the operation of airports. Some states have passed statutes which seek to supplement the common law. These fall into two basic types; the first merely declares that airports are declared to be public, governmental, and municipal purposes and the second contains language similar to that in the first type, but in addition, expressly exempts the municipality from liability for torts committed in the operation of the airports. The better view is that the first type of statute is not intended to free the municipality from liability, but if it should be so construed as granting immunity, then it, as well as the second type of statute, should be deemed unconstitutional.

The reasons for retaining municipal immunity, such as fear of an excessive tort burden and possibility of administrative abuse have long been discredited. The classification of airports as proprietary functions is essentially sound. And justification for converting airports by statute into governmental functions must indeed be hopelessly weak. Such statutes, where there is ambiguity, should be read by the courts as imposing liability, or declared unconstitutional.

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[51] What if the municipality carries liability insurance? Does this operate as a waiver of statutory immunity? Two recent cases, both coming from jurisdictions having Type II statutes, bear on the question. Holland v. Western Airlines, 154 F. Supp. 457 (D. Mont. 1957), involving a Montana statute, upholds its validity and indicates that the carrying of liability insurance does not waive immunity. But in City of Knoxville, Tenn. v. Bailey, 222 F. 2d 520 (6th Cir. 1955), the opposite result was reached. This is a minority holding and is severely criticized in Orr, *Tennessee Statute Making Airports Governmental Function*, 21 Ins. Counsel J. 77 (1954). The writer argues that the city never voluntarily waived its immunity, and that the Tennessee statute (the same one which was upheld in the Stocker v. Nashville case) expressly prohibited suit. Furthermore, it is argued, even if the Tennessee law were to be arbitrarily established as waiving immunity if liability insurance were secured, it would not be illegal to bring suit because suit is specifically prohibited.

INTERNATIONAL REVIEW

Compiled by JULIAN GAZDIK in cooperation with DR. G. F. FITZGERALD and MR. A. M. LESTER (ICAO) and MRS. M. A. DOWLING.

I. INTERNATIONAL CIVIL AVIATION ORGANIZATION
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Technical Assistance for Economic Development—First Quarterly Report to the Council on the Technical Assistance Activities of the Organization
Convention on International Civil Aviation (Chicago—1944)
Preparation and Dissemination of Aeronautical Information, Including Aeronautical Charts

II. EUROPEAN CIVIL AVIATION CONFERENCE
Third Session—March, 1959

III. INTERNATIONAL AIR TRANSPORT ASSOCIATION
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IV. RIO DE JANEIRO CIVIL AVIATION CONFERENCE
Final Act of the Conferencia Regional de Aviacao Civil

V. INTERNATIONAL FEDERATION OF AIRLINE PILOTS ASSOCIATIONS
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Note on the Cooperation of the Police Authorities Within the Organization

I. INTERNATIONAL CIVIL AVIATION ORGANIZATION

STUDY OF THE CLARIFICATION OF "INTERNATIONAL"

Report by the Chairman of the Air Transport Committee

1. The Committee desires to make an interim report to the Council for its information on the present status of its study of the clarification of the meaning of the word "international." The Committee decided to study this matter in April 1956. The Council later approved its incorporation in the work program for the period 1957-59. Its importance was emphasized in the Report of the Economic Commission of the 10th Session of the Assembly (Doc. 7710 A10-EC/28, para. 27).

2. The Committee started with an examination of the uses of the term "international" as applied in the Convention and in ICAO's Air Transport work in general, but it was decided at an early stage to limit the study for the present to its purely statistical application, since this provides a number of specific problems whose solution will be immediately useful both to the Secretariat and to contracting States. The meaning of the term "international air service" in the Convention is governed by the definition in Article 96, and where problems have arisen over the meaning of similar phrases in other places they have generally been dealt with by ad hoc definitions (e.g. in the Warsaw and Rome Conventions).

3. The present scope of the study was agreed by the Committee to be to develop a satisfactory, practicable and generally acceptable method by

which governments and airlines preparing air transport statistics for ICAO can classify them with respect to the term "international." Examination of the ICAO air transport statistics showed that there is a wide field where there is no difficulty or difference of opinion concerning how this classification should be made. Difficulties arise mainly with respect to statistics reported on Air Transport Reporting Form A and with respect to a relatively small section of the operations reported on this form. Five main problems require to be solved:

(i) The problem of air services with all points of call within the territory of the State of the operator but passing over foreign territory or international waters for relatively short distances (Montreal to Moncton passing over Maine; New York to Miami passing over the Atlantic). Such services might be regarded as partly or wholly "international" either because they would be so defined under Article 96 of the Convention (if they pass over foreign territory) or on general grounds, but in most cases governments and airlines prefer to classify them as wholly "domestic";

(ii) the problem of services of domestic type with short spurs into foreign territory with traffic stops there (e.g. the service from Chicago to Winnipeg with several stops in the U.S. before crossing the border). Services of this kind might be classified as wholly "international" or wholly "domestic," or partly the one and partly the other;

(iii) the problem of services linking two or more points in the territory of the State of the carrier but passing for relatively substantial distances over international waters or foreign territory *with no* traffic stop in foreign territory (e.g. services between the U.S. and Hawaii, Alaska and Puerto Rico; between the U.K. and Bermuda or Gibraltar; between the two parts of Pakistan; between France and French West Africa). Some governments regard such services as "international" while others have difficulty in using this term to describe the operations of a service linking two points in their own territory;

(iv) the problem of services similar to those described in sub-paragraph (iii) but *with* traffic stops in foreign territory. Services of this kind are more generally accepted as "international" but in some cases governments feel this is an unsatisfactory classification if the main objective of the service is to carry traffic between two points in their own territory;

(v) the problem of categorizing the traffic carried when both international and domestic traffic is carried on the same stage. To classify the traffic carried separately from the operation of the aircraft is statistically difficult.

4. A Working Group, established by the Committee early in 1958 to study these problems, concluded that although it was possible to find a basis for agreement on some aspects of the matter, there were others on which differences of opinion appeared to be irreconcilable. The Working Group, therefore, developed a set of principles for the consideration of the Committee indicating the points on which there seemed to be general agreement and those on which differences of opinion still existed and suggested that the matter might be referred to the Third Session of the Statistics Division for consideration from the purely statistical point of view. The Statistics Division found some of the Working Group's proposals satisfactory but modified others in important respects. Examining the Division's conclusions (STA III Recommendation No. 11) during the present session, the Committee at

first was not able to accept them, but after further examination by the Working Group it was recognized that all possible solutions contained difficulties of some sort and that either the Working Group's proposals or the Division's proposals would result in a narrowing of the field where opinions differed to less than 5 per cent of ICAO's statistics. The Division's proposals were finally accepted in principle with a large degree of unanimity, it being understood that the instructions to be placed on Form A will have to be phrased differently and that the Secretariat will carefully study their effect in practice on ICAO's statistics and will report any difficulties that arise. The Division's proposals were along the following lines:

(i) that the classification of air transport operations, for statistical purposes, should be based on the flight stage" defined as the operation of an aircraft from take-off to landing; (A "technical stop" should not of itself result in the flight stages before and after it being classified differently.)

(ii) that each "flight stage" should be classified into one of the three categories "international," "territorial" and "domestic" according to the following rules:

(a) a "flight stage" with one or both terminals in the territory of a State other than that of the carrier should be classified as "international";

(b) a "flight stage" with both terminals in the territory of the State of the carrier passing over foreign territory or international waters for relatively substantial distances, should be classified as "territorial";

(c) all remaining "flight stages" should be classified as "domestic";

(iii) that, if a "domestic" or "territorial" flight stage forms an integral part of an international air service, it may be reported as "international" and if a "domestic" flight stage forms an integral part of a "territorial" air service, it may be reported as "territorial";

(iv) that the traffic carried should be classified in the same way as the associated flight stage.

5. It should be emphasized that these principles are for application only in the statistical classification of air transport activities and would have no significance or implication in any other sense. It will be made clear in the instructions on Form A that departures from them should be kept to a minimum and should in all cases be reported to ICAO.

6. This report is purely for the information of the Council and a further report will be submitted in the Autumn Session proposing specific instructions to be approved by the Council for incorporation in the Air Transport Reporting Forms.

TECHNICAL ASSISTANCE FOR ECONOMIC DEVELOPMENT — FIRST QUARTERLY REPORT TO THE COUNCIL ON THE TECHNICAL ASSISTANCE ACTIVITIES OF THE ORGANIZATION

1. At the end of the quarter the number of experts in the field was eighty-two. They were at work in twenty-four countries and regional projects. During the first quarter four new experts and instructors—in Radio and Air Traffic Services—were appointed; and a Civil Aviation Adviser, an Airport Management Expert and an Aeronautical Stores and Supplies Expert completed their assignments. Two experts who had been accepted by the Government of Iraq were unable to enter the country because of visa difficulties and consequently they were attached to another mission.

Five fellowships in communications and airport management started during the quarter and seven other fellowships and scholarships in radio, air traffic services, flight operations and meteorology were completed and the students concerned returned to their own countries. There were fifty-three scholars and fellows studying at the end of the quarter. A feature in many missions' work was study of the implications of the recent MID/SEA Regional Meeting in Rome. Some illustrative details follow of the work done in the various countries receiving technical assistance.

2. The figure of about sixty per cent of experts' time spent on basic technical training was maintained. Almost all experts gave advice or practical help in the solution of problems, and experts for whom this is their primary function gave some time to training, mostly by way of on-the-job instruction. As in the past the work program was a blend of advice, practical help, demonstration and formal training.

Middle East Regional Project

3. Work was completed in Jordan and Lebanon, and advice and assistance given with the examination of pilots for airline transport pilot licenses and type ratings. Recommendations were made in Jordan for a Flight Safety Division and a Personnel Licensing Section. In Greece advice was given on Civil Aviation Regulations for airworthiness, personnel licensing and flight operations; and in both Greece and Jordan a detailed table of contents for operations manuals was prepared. Pilot licenses and log book formats were prepared for Greece and Ethiopia. Advice was given to Pakistan in airworthiness on regulations, technical notices, technical publications, inspection procedures and the conduct of examinations.

Latin American Regional Project (International Civil Aviation Training Center, Mexico City)

4. Courses of instruction continued in air traffic control, radio maintenance, aircraft maintenance, meteorology, flight operations and flying training.

Training

5. Technical courses continued in many countries and the table attached as an Appendix shows in broad categories the numbers and disposition of the students under training during the first quarter of 1959.

Afghanistan

6. Training in radio operations, radio maintenance, powerplant maintenance and general aviation subjects continued at the ICAO Operational Training Center, the Afghan Institute of Technology and the Junior Aviation School. Assistance was given in the selection of new students for the latter school following a radio broadcast which brought 1,000 applications for the 260 vacancies available. The committee of technical representatives from various civil aviation sections working on the translation of ICAO documents into Farsi studied the ICAO Lexicon and was given explanations of the terms used in this document. The Chief of Mission attended the MID/SEA Regional Air Navigation Meeting in Rome as an adviser to the six-man Afghan team.

Argentina

7. Transport data for economic analyses related to air transport were prepared. Data on routes, aircraft in use, airline schedules, seat/miles available and used, and operating costs were prepared, including references to the use of turbine-engined aircraft.

Cambodia

8. The mission consists of a single expert who started to work in the country near the end of February. A provisional program of technical assist-

ance for next year was prepared and preparations for a training center were started.

El Salvador

9. The study of the San Salvador Airport project together with an alternative site at Astoria continued. Twenty-seven plans relating to them were completed and comparative cost estimates were prepared in draft form.

Ethiopia

10. Training classes continued for metorological forecasters, meteorological observer/radio-telephony operators, radio maintenance and aircraft maintenance mechanics. Advice was given on the kind of work involved in the design and construction of airports, on a plan for the organization of a Department of Civil Aviation and on the introduction of Class B messages on the AFTN. The construction of a new terminal building at Addis Ababa caused a good deal of work in transferring all the MET and COM facilities to temporary quarters. The rawind and rasonde station was completed by the installation, adjustment and operational checking of equipment.

Greece

11. Draft regulations for pilot and maintenance mechanic licenses and formats for pilot licenses and log books were recommended. A guide was prepared showing the material which should be included in an Operation Manual. Obstacle clearance limits were recommended for FIR Athens and all airways and advisory routes. Advice was given during a review of a proposed Athens Control Area scheme. Recommendations were made to reorganize the AFTN center so as to reduce delays in traffic messages and to reduce the staff needed to man the service. An ATS trainer was completed and was used in a special course of instruction given to explain the use of Altimeter Setting Procedures.

Guatemala

12. The training of forecasters continued throughout the quarter. Work was done in maintaining and operating the existing meteorological stations and in reorganizing the meteorological office hours of duty to provide 24-hours forecasting service. Advice was given on the development of internal communications, and assistance was given in the preparation of transmitter and radio range equipment for installation. Improvements were recommended in CW installations to assist the passage of Class B messages. During a visit to a recent Central American Directors General of Civil Aviation meeting the opportunity was used to align correctly the El Salvador RTT aerial systems.

India

13. Recommendations were made for changes in the Calcutta control area and control zone. Draft SAR emergency orders were prepared for Calcutta Airport. Advice was given on the criteria to be used with regard to obstacle clearance limits for radio masts. Advice was given on the siting of meteorological instruments at Calcutta Airport. Proposals were made on the air traffic control establishment necessary for Calcutta Airport. Standing instructions were compiled for radar controllers at Calcutta. Detailed operational requirements and a plan for arrangment of the associated equipment were submitted for resiting the aerodrome control radar. The clearing of the approach areas so as to improve radar returns was supervised. Practical training in radar continued for the students under training.

Indonesia

14. The larger part of the work of the mission was in regular courses of training in the fields of radio maintenance, aircraft maintenance, air traffic

control, radio operations and flight training. Advice was given on the condition of the runway at Djakarta. Proposals for a suggested establishment of maintenance and inspection staff for the national airline were discussed. Advice was given on the matters brought before the regular monthly meetings on airport management. Advice and assistance were given to the local Department on the preparation of draft regulations for the flight navigator license and for flight time limitations. In addition, a pamphlet was prepared describing the syllabus and other requirements for the private pilot and student pilot licenses. Field intensity measurements of NDB's were made and the VDF equipment was checked for operational efficiency. A visit was made to Singapore to discuss the requirements of the AFTN Djakarta/Singapore. Assistance was given in selecting a site for a NDB north of Djakarta Airport.

Iran

15. Training continued for students in air traffic control, radio maintenance, radio operations, and meteorological observation. Advice was given on regulations concerning flight time limitations. An analysis was made of the services supplied by the Meteorological Department and recommendations were made to improve these services. General advice was given on the airport at Abadan. A revised training program was drawn up for 1959/1960. Advice was given on communications operations. Assistance was given in selecting a site for a new transmitter center including the design of the antenna site and the layout of the building. Draft job descriptions were prepared for various key employees of the Department of Civil Aviation. Assistance was given in setting up a NDB monitoring station at Kerman. The procedures used on AFTN and SITA circuits were coordinated. The Abadan tower control desk was completed under the supervision of the Mission. Advice and assistance was given in the repair of the lighting system at Mehrabad. A TVOR draft approach and let-down chart for Mehrabad was prepared. Personnel licensing examinations were conducted for 18 applicants for commercial pilot licenses. An inspection was made of several meteorological stations. Plans were prepared for the introduction of a TVOR Volmet terminal broadcast. Equipment was installed in a hut for Pibal observations at Abadan. A training program was discussed and arranged with Iranair to qualify mechanics for type ratings and suitable syllabi were prepared.

Israel

16. A draft of "Operation of Aircraft" regulations was prepared and distributed for comment and further action within the Department of Civil Aviation. Advice was given on which of the requirements for assessing competence of flight personnel could be satisfied by the use of a flight trainer. Work continued on improving the personnel licensing and airworthiness regulations. A number of lectures on "Airworthiness Codes" were given at the technical university in Haifa. On-the-job training continued with the personnel licensing counterpart official in the Department of Civil Aviation.

Lebanon

17. Training courses in meteorology, air traffic control and radio maintenance continued. Circuit demonstration panels were made up for the radio maintenance class. Assistance was given in discussions on coordination of the Lebanon and Cyprus air traffic control procedures. Proposals were made to revise the existing search and rescue scheme. A study was made of the area around Beirut Airport and recommendations made to restrict other activities in the area so that the airport may be developed. Suggestions were made on installing a special aerial system for the RTT circuit Beirut/

Bahrein. Assistance was given in the preparation of estimates for the work needed to prepare a VOR site at Baisons.

Pakistan

18. An analysis of the use of radar at Karachi Airport for air traffic control purposes was prepared and was presented to the Director General of Civil Aviation. Work continued on the preparation of amended plans to improve the Karachi control area to facilitate the operation of turbine-engined aircraft. The ATS course continued under training and it is expected that the practical training part of the course will be completed early in the next quarter.

Paraguay

19. A meteorological office at Asunción, constructed in accordance with a project submitted by the Mission, was completed at the end of the quarter and was brought into use. Assistance was given with the installation of equipment at three meteorological stations. Work continued on the printing of technical publications in meteorology. Assistance was given to an interministerial commission on the question of communications. A series of discussions took place during which the proposed re-organization of the Department of Meteorology was explained. An air traffic control manual was completed and an aeronautical information publication was completed as far as possible together with a series of NOTAMS. The students of the air traffic control course continued with on-the-job training and on-the-job training was given to meteorological staff using publications which had been prepared.

Peru

20. Work continued at the Aviation School at Collique Airport and shortly after the end of the quarter an aircraft mechanics course started. Work continued on the preparation of the commercial pilot, radio mechanic and meteorological observer-R/T course material.

Philippines

21. Training in air traffic control was completed during the quarter. An airways technicians' course was completed and followed up with further on-the-job training. Advice was given on the specification of Tape Relay equipment and a survey was made of the communications center in order to reduce message delays. Assistance was given in planning the extension of the range of VHF communications in the Manila control area.

Thailand

22. Training continued with a course of aircraft maintenance mechanics. Advice was given on the interpretation of the standards for aircraft maintenance mechanics contained in Annex 1.

Tunisia

23. The principal work was to give assistance in the development of a civil aviation administration with nationals taking over as many of the responsible positions as possible. Advice was given on the job descriptions for many of the key personnel. Assistance was given in surveying the site of a new runway at El Aouina. Training continued for air traffic control officers and radio operators.

United Arab Republic—Egypt

24. Training continued for aircraft maintenance and radio maintenance mechanics. Advice was given on the design of a new radio operations technical control center. Recommendations were made to Misr Air on modification of engines in C-47 aircraft.

United Arab Republic—Syria

25. Training continued in air traffic services, radio operations and radio maintenance. Advice was given on the preparation of regulations based on Annex I and on the preparation of an AIP. Assistance was given with the repair of rasonde equipment. The HFRT services were checked and assistance was given in solving difficulties which had been experienced with VHF reception. Aid was given in checking radio frequencies for suitability and efficiency for the teletype circuit with Lebanon. Assistance was given in surveying runway, taxiway, and parking areas at Damascus.

Principal Results of the Technical Assistance Board Meeting in March 1959

26. In C-WP/2780 of 3 November 1958 we reported a gap between the approved 1959 Program and the resources available, mainly due to a shortfall in contributions. Part of the deficit was found by a withdrawal of 1.5 million dollars from the Working Capital and Reserve Fund. This, however, was not sufficient to close the gap and as a result the Technical Assistance Board decided at its March meeting in New York that only 94% of the funds needed for the approved program could be earmarked to the participating Organizations. This means for ICAO a reduction of approximately $80,000 for the year.

27. A similar position prevails in respect of the 1960 field program. Even assuming an increase in contributions for 1960 the Technical Assistance Board estimated that the total resources might fall short by as much as 2½ million dollars of the requirements. As an initial step they decided to fix the planning target of the 1960 Program about 5% lower than that of 1959. A downward revision of the program may, nevertheless, be necessary at the October meeting this year to bring it into realistic relationship with contributions. ICAO's share of the planning target for 1960 has been approved at $1,052,000 for country projects. ICAO's share of the approved program, however, will depend upon the amount of assistance actually requested by States.

Contingency Grants

28. When a State urgently requires assistance not provided for in the approved program, it may make a request for a contingency grant from the Executive Chairman of the Technical Assistance Board. Before the beginning of the year, a request by Saudi Arabia for a contingency grant to enable a civil aviation adviser to be sent there for twelve months in 1959 had been approved. During the first quarter of the year a joint request by Guatemala, Nicaragua, Honduras, El Salvador and Costa Rica for the services of two experts to help in drafting a constitution for an inter-governmental corporation to provide ATS and radio services over their territory was received and awaits approval by the Executive Chairman of the Technical Assistance Board. Other requests, by Morocco for an adviser to help draw up a national training program and for a legal adviser, and from Jordan for another legal adviser, also await approval. ICAO has been informed that a further request for a contingency grant is about to be made from Nepal.

CONVENTION ON INTERNATIONAL CIVIL AVIATION (CHICAGO—1944)

The Republic of Guinea has become the 74th member state of the International Civil Aviation Organization on Sunday, 26 April, thirty days after its instrument of adherence to the Convention on International Civil Aviation was deposited.

STUDENTS UNDER TRAINING IN TECHNICAL COURSES DURING THE QUARTER—JANUARY-MARCH 1959

Country	*Aircraft Maintenance Mechanic*	*Aircraft Maintenance Mechanic Instructors*	*Air Traffic Control*	*Radio Maintenance*	*Radio Operations*	*Flight Operations*	*Meteorology*	*Pilots*	*Pilot Ground Instructors*	*Powerplant Maintenance*	*Teletype Maintenance*
Afghanistan				6	37					21	
Burma											6
Ethiopia	28			32			34				
Greece			36								
India			6								
Indonesia	182	12	(66)	26 (61)	(21)			106*	5		
Iran			19	19	20		12				6
Lebanon			6	6			5				
Latin American Civil Aviation Training Center, Mexico	46		9	24		21	(10)	74*			
Pakistan			12								
Paraguay			19								
Philippines			34	11							
Thailand	5										
Tunisia			14		26						
UAR—Egypt	35		(25)	7	(20)						
UAR—Syria			15	14	18						
Totals	296	12	170 (91)	145 (61)	101 (41)	21	51 (10)	180*	5	21	12
Grand Totals			834	(203)	180*						

* While ICAO has no responsibility for the provision of flight training, the missions concerned take part in the ground training of pilots, and have responsibility for direction of the program as a whole.

Figures in parenthesis show numbers being trained by national instructors on courses previously conducted by Technical Assistance instructors or courses advised or assisted by Technical Assistance missions.

PREPARATION AND DISSEMINATION OF AERONAUTICAL INFORMATION, INCLUDING AERONAUTICAL CHARTS

A meeting devoted to a revision of the international standards which govern the world-wide distribution of aeronautical information to airmen and the preparation of aeronautical navigation charts was held in Montreal between April 28 and May 25, 1959. This meeting, of the Aeronautical Information Services and Aeronautical Charts Division of the International Civil Aviation Organization, was attended by representatives of 23 nations and three international organizations; its chairman was Colonel M. Dévé of France, with W. E. Clark of the United States and T. Kameyama of Japan as vice-chairmen.

A partial list of the recommendations, made by the meeting to the ICAO Air Navigation Commission, follows:

Aeronautical Information Services

The Division decided that certain changes were necessary in the International Standards and Recommended Practices on this subject to meet the needs of present day and future air operations. Included in the Division's recommendations was one providing for an "Aeronautical Information Circular" which would report separately on information of a purely administrative or advisory nature. The Division stressed the need for the early publication of a manual in preparation by the Secretariat and designed to assist States in the development of their information services.

Types of Aeronautical Charts

The Division prepared specifications for 15 types of aeronautical charts for use in international air navigation. It decided that each ICAO member state should accept the responsibility to make data concerning its territories available to another state to allow the latter state to prepare aeronautical charts, covering the territory of more than one state. New types of charts recommended include a 1:2,000,000 scale navigation chart, a radio navigation chart, a terminal area chart and a special aerodrome chart for aerodromes with complicated movement areas.

The Division also recommended certain changes to the existing international standards on chart symbols.

Responsibility for ICAO Chart Series

Responsibility for 1:1,000,000 World Aeronautical Chart series is shared by a group of ICAO member nations. Since the responsibility was originally allocated, there has been a large increase in the number of nations participating in the work of ICAO and in the production of aeronautical charts. The Division therefore suggested a re-allocation of production responsibilities involving 45 countries.

Re-allocation of responsibility for the 1:500,000 series of Europe was left for discussion within the European region.

II. EUROPEAN CIVIL AVIATION CONFERENCE THIRD SESSION—MARCH, 1959

1. The Third Session of the European Civil Aviation Conference was held between 9 and 20 March 1959 in the premises of the Council of Europe in Strasbourg. The meeting was attended by seventeen of the nineteen ECAC member States with observers from seven other States and eleven international organizations. Two resolutions and forty-four recommendations were adopted constituting a substantial work program to be carried out before the next session of the Conference which is expected to be held in approximately two years. (The references of the Sessions are issued as ICAO document No. 7877. ECAC/3-1.)

Coordination and Liberalization of European Air Transport

2. The most noteworthy act of the Session was the establishment of a Committee on Coordination and Liberalization, open to all member States and intended to meet as often as necessary and probably two or three times a year. This Committee is to study, in relation to the practical problems involved, general governmental measures to facilitate coordination between airlines with a view to improving their economic position and efficiency. It will establish its own work program, but has been asked by the Conference to make studies of the effects of jet aircraft in Europe and of the problems raised by the development of inclusive tours. The relevant resolution reads as follows:

RESOLUTION NO. 1

COMMITTEE ON CO-ORDINATION AND LIBERALIZATION

WHEREAS the European Civil Aviation Conference has as its object generally to review the development of intra-European air transport with the object of promoting the co-ordination, the better utilization, and the orderly development of such air transport; and to consider any special problem that may arise in this field; and

WHEREAS a new era of air transport is beginning; and

WHEREAS in these circumstances it will become increasingly important for the member States to maintain close working relationships; and

WHEREAS there is a need for a more fundamental examination of the problems of co-operation and liberalization; and

WHEREAS the Rules of Procedure of the European Civil Aviation Conference provide that committees open to all States members of the Conference may be established by the Conference as it considers necessary or desirable;

THE CONFERENCE RESOLVES

1. that, provided that a majority of the member States have not, by 1 May 1959, informed the President that they are opposed to this Resolution, a Committee on co-ordination and liberalization be set up, open to all members of the European Civil Aviation Conference, assisted as necessary by their airline advisers;
2. that this Committee shall be convened as frequently as necessary by the President of the European Civil Aviation Conference, acting in consultation with the Vice-Presidents;
3. that the objective of this Committee shall be to study, in relation to the practical problems involved:
   (a) measures of a general nature that might be taken at governmental level to facilitate and encourage co-ordination and co-operation between the European airlines, with a view to improving their economic position and their efficiency; and
   (b) the corresponding measures of liberalization;
4. that this Committee shall report to the Conference; and
5. that the President, on the assumption that the majority of member States will not, by 1 May 1959, have opposed this Resolution, shall proceed as soon as possible to consult the Vice-Presidents on arrangements for the first meeting of the Committee on co-ordination and liberalization.

Standard Clauses for Bilateral Agreements

3. With the general object of promoting the coordination of European air transport and with the particular intention of simplifying negotiations between States the Conference approved a set of standard administrative and technical clauses for bilateral agreements and recommended that ECAC

States adopt them in future bilateral agreements. ICAO was invited to study these clauses to see if they could be of use to non-European States (Recommendation No. 38). The clauses referred to read as follows:

STANDARD CLAUSES FOR BILATERAL AGREEMENTS

ARTICLE 1

Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement, for the purpose of establishing scheduled international air services on the routes specified [in an Annex hereto or in exchanges of notes]. Such services and routes are hereafter called "the agreed services" and "the specified routes" respectively. The airlines designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following rights:

(a) to fly without landing across the territory of the other Contracting Party;

(b) to make stops in the said territory for non-traffic purposes.

(c) [Here insert a description of the traffic rights granted in the particular bilateral agreement.]

(d)

(etc.)

ARTICLE 2

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes.

2. On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline or airlines designated the appropriate operating authorizations.

3. The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention on International Civil Aviation (Chicago, 1944).

4. Each Contractng Party shall have the right to refuse to grant the operating authorizations referred to in paragraph 2 of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 1, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

5. When an airline has been so designated and authorized, it may begin at any time to operate the agreed services, provided that a tariff established in accordance with the provisions of Article 7 of the present Agreement is in force in respect of that service.

ARTICLE 3

1. Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights specified in Article 1 of the present Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

(a) in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party, or

(b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights, or

(c) in case the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement.

2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringement of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

ARTICLE 4

1. Aircraft operated on international services by the designated airlines of either Contracting Party, as well as their regular equipment, supplies of fuels and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.

2. There shall also be exempt[1] from the same duties and taxes, with the exception of charges corresponding to the service performed:

(a) aircraft stores taken on board in the territory of either Contracting Party, within limits fixed by the authorities of said Contracting Party, and for use on board aircraft engaged in an international service of the other Contracting Party;

(b) spare parts entered into the territory of either Contracting Party for the maintenance or repair of aircraft used on international services by the designated airlines of the other Contracting Party.

(c) fuel and lubricants destined to supply aircraft operated on international services by the designated airlines of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

Materials referred to in sub-paragraphs (a), (b) and (c) above may be required to be kept under Customs supervision or control.

ARTICLE 5

The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of such territory. In such case, they may be placed under the supervision of said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

ARTICLE 6

Passengers in transit across the territory of either Contracting Party shall be subject to no more than a very simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

ARTICLE 7

1. The tariffs to be charged by the airlines of one Contracting Party for

[1] The means of giving effect to exemption may vary from country to country; for example taxes may have to be paid to be refunded afterwards.

carriage to or from the territory of the other Contracting Party shall be established at reasonable levels due regard being paid to all relevant factors including cost of operation, reasonable profit, and the tariffs of other airlines.

2. The tariffs referred to in paragraph 1 of this Article shall, if possible, be agreed by the designated airlines concerned of both Contracting Parties, in consultation with other airlines operating over the whole or part of the route, and such agreement shall, where possible be reached through the rate-fixing machinery of the International Air Transport Association.

3. The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of the Contracting Parties at least thirty (30) days before the proposed date of their introduction; in special cases, this time limit may be reduced, subject to the agreement of the said authorities.

4. If the designated airlines cannot agree on any of these tariffs, or if for some other reason a tariff cannot be fixed in accordance with the provisions of paragraph 2 of this Article, or if during the first 15 days of the 30 days' period referred to in paragraph 3 of this Article one Contracting Party gives the other Contracting Party notice of its dissatisfaction with any tariff agreed in accordance with the provisions of paragraph 2 of this Article, the aeronautical authorities of the Contracting Parties shall try to determine the tariff by agreement between themselves.

5. If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph 3 of this Article and on the determination of any tariff under paragraph 4, the dispute shall be settled in accordance with the provisions of Article 13 of the present Agreement.

6. Subject to the provisions of paragraph 3 of this Article, no tariff shall come into force if the aeronautical authorities of either Contracting Party have not approved it.

7. The tariffs established in accordance with the provisions of this Article shall remain in force until new tariffs have been established in accordance with the provisions of this Article.

ARTICLE 8

Either Contracting Party undertakes to grant the other Party free transfer, at the official rate of exchange, of the excess of receipts over expenditure achieved on its territory in connection with the carriage of passengers, baggage, mail shipments and freight by the designated airline of the other Party. Wherever the payments system between Contracting Parties is governed by a special agreement, this agreement shall apply.

ARTICLE 9

In a spirit of close co-operation, the Aeronautical Authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of the present Agreement and the Annexes thereto.

ARTICLE 10

1. If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement, it may request consultation with the other Contracting Party; such consultation, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days of the date of the request. Any modifications so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.

2. Modifications to routes may be made by direct agreement between the competent aeronautical authorities of the Contracting Parties.

ARTICLE 11

The present Agreement and its Annexes will be amended so as to conform with any multilateral convention which may become binding on both Contracting Parties.

ARTICLE 12

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate the present Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

Traffic Rights for Scheduled Services

On the problem of the traffic rights to be accorded to freight on scheduled services the Conference first decided to recommend that the terms of Recommendation No. 3 (1954) dealing with all-freight services should be extended for a second term of five years from 1 October 1959. By these terms ECAC States are urged not to apply the distinctions in their bilateral agreements based on the place of origin or destination of the traffic in question. It was then recommended that these terms be extended to cover freight on mixed services as well as all-freight services. If implemented this would mean that freight could be carried on intra-European scheduled services between any two specified points on routes authorized in bilateral agreements regardless of restrictions on fifth freedom traffic contained in bilateral agreements.

Statistics

Two other recommendations adopted by the Conference are concerned with statistics. In the first the Council of ICAO is urged, in considering the collection of traffic statistics from international airports, to give particular attention to the desirability of obtaining information concerning non-scheduled air transport in Europe. In this connection the Conference recognizes the difficulty of defining non-scheduled operations but did not believe it necessary to arrive at water-tight definitions in order to produce useful statistics. The second recommendation deals with the problem of ensuring that methods of collecting statistics are not objectionable from the facilitation point of view. It is recommended that when clearance documents are required for statistical purposes they be used in such a way as not to impede traffic and that a working group be set up to study ways and means of collecting the necessary statistical information without recourse to clearance documents.

Passenger Service Charges

The Conference considered the question of passenger service charges at European airports which had been referred to it by a resolution of the Council of Europe. Representatives of IATA and the International Chamber of Commerce made strong appeals for the abolition of these charges, but the Conference came to the same conclusion as that reached by the Council of ICAO when it discussed the subject, to the effect that passenger service charges were not objectionable in principle, but that they caused incon-

venience to passengers if levied directly from them so that in that form they should be avoided, if possible. Member States and the airlines were urged to take appropriate action.

Interchange of Aircraft

The Conference expressed its appreciation of the work done by the Secretariat and member States in developing a draft multilateral agreement on aircraft interchange. It was felt, however, that the conclusion of such a multilateral agreement was not justified and that work on its development should be discontinued, member States being advised that interchange arrangements should continue to be regulated on a bilateral basis along the lines indicated in Recommendations 19, 20 and 21 of the Second Session. The relevant papers produced in the course of this study are to be collected and circulated to member States for their guidance.

Airworthiness Certification

Three recommendations were adopted on the subject of airworthiness certification. The first deals with a draft text for a multilateral agreement relating to certificates of airworthiness for imported aircraft on which text the Secretariat and member States are requested to make comments in sufficient time to permit the preparation of a final text to be opened for signature at the ICAO Paris Office on 18 September 1959. (See THE JOURNAL OF AIR LAW AND COMMERCE, Vol. 26 Winter 1959—Page 72.) The second recommendation deals with the certification of separately imported accessories and component parts. The Secretariat is requested to prepare a paper setting forth the procedures used by member States for dealing with this matter and a Study Group is to be established to develop a uniform procedure. In the third recommendation, dealing with further studies in connection with certificates of airworthiness, the Secretariat is called on to prepare a paper on the legal implications arising from certificates of airworthiness for export and another setting out factual information regarding the categories and sub-divisions for certificates of airworthiness. On the completion of this work a Study Group is to be established to develop proposals for achieving uniformity on these matters.

Technical Matters

The Conference adopted eleven recommendations relating to technical matters. One called on States to eliminate difficulties caused to airlines by regulations for the maintenance of aircraft away from the State of registry. A second dealt with the exchange of information on difficulties encountered due to lack of uniformity in regulations governing air traffic and the technical operation of aircraft. The remaining nine dealt with the training of flight and ground personnel being concerned with such problems as the dissemination of information on available facilities, the standardization of curricula, and the encouragement of foreign students as a form of cooperative financing.

Facilitation Matters

Twenty-one recommendations were adopted on facilitation. Five of these arose out of the review of the implementation of recommendations adopted at the Second Session of the Conference and dealt with health control arrangements, identity documents for travelers, abolition of passenger manifests, simplification of inbound baggage examination, and steps to achieve complete implementation of earlier recommendations. The Conference devoted considerable time to discussing ways in which additional facilitation could be provided for air cargo, noting that the Council of ICAO had also considered it necessary to recommend special efforts to facilitate air cargo. The Conference adopted seven recommendations on this subject,

dealing with services of public officials at airports, special provisions for shipments of low value, simplified measures concerning import and export licenses or permits, alternative clearance points for import and export of cargo, errors in cargo handling and documents, etc. Recommendations were also adopted concerning elimination of Embarkation/disembarkation Cards, simplified use of the General Declaration, simplified measures for the flow of passengers and baggage, pre-flight check-in times and baggage conveyance.

Methods of Work and Program

The Conference agreed that experience had proved the relationship between ECAC and ICAO to be satisfactory and that no change was necessary. On budgetary questions a resolution was adopted in which the Secretary was requested to submit to member States within three months estimates for all meetings scheduled to be held up to and including the next plenary Session, and to submit to the next plenary Session proposals for procedure to ensure that the Conference may approve estimates before incurring expenditure.

III. INTERNATIONAL AIR TRANSPORT ASSOCIATION

RECOMMENDATIONS BY IATA FOR SARPS AND GUIDANCE MATERIAL FOR SHORT DISTANCE NAVAIDS

1. At the opening Plenary Session, held in Montreal, February, 1959, IATA stated its views as to the solution of the Short Distance NAVAIDS problem best suited to international air transport operations. Essentially, IATA's views are these:

(i) VOR should be retained as the primary ICAO Standard Short Distance NAVAID; its protection date should be extended to at least 1970 and beyond that time in certain areas as required; the further expansion and implementation of VOR in conformity with existing ICAO Regional Plans should be fully encouraged.

(ii) Improved fixing coverage, when or where required, should be gradually built up on a "building block" basis through the addition of the co-located distance measuring component to celected VOR stations.

(iii) To this end, DME-T specifications should be introduced as an ICAO Standard in Annex 10, Part 1, Para. 3.6; and a new DME-T application Standard should be developed calling for the addition of DME-T to those VOR stations where it is justified by operational requirements related to Air Traffic Control and Navigation.

2. In reaching these conclusions, IATA was influenced by the following considerations:

(i) In early postwar years, ICAO adopted the concept of azimuth/distance short range NAVAIDS system. This has been reflected for many years in Annex 10, Part 1, Paras. 2.2, 3.4, and 3.6.

(ii) The azimuth element of the system, VHF Omni-Range (VOR), has been widely implemented as the primary short distance navigation aid, providing extensive tracking coverage in many areas of the world, and especially in North America and Europe. Additionally, VOR is in process of being installed on air routes in South America, Africa, the Middle East and Asia and two recent ICAO RAN Meetings recommended its retention until at least 1980. The extent of VOR implementation on a world-wide basis is one of the most remarkable results obtained through official action and coordination by ICAO.

(iii) The need for continuous fixing information has become urgent in some areas with increasing traffic densities and the appearance of turbo-jet aircraft.

(iv) Aware of this need, IATA Member Airlines have carefully studied and evaluated the short distance navigation system which is now being offered as the alternative solution of navigation problems in high traffic density areas. Although the efforts devoted to its development were fully recognized, IATA concluded that the characteristics of this system are not of such a nature as to justify a change in the concept of ICAO policy on the subject of aids to short distance navigation. On the other hand, DME-T is based on proven techniques previously evaluated by Member Airlines and well established in other applications. The functioning of this system has also been demonstrated to airlines' satisfaction. In IATA's appraisal, DME-T offers the best operational simplicity without undue technical complexity.

(v) Additional factors to be considered are the world-wide success of VOR service, the very considerable investments in VOR ground and aircraft equipment throughout the world, and the need for the greatest possible stability in ICAO Standards and Recommended Practices as guides for the equipment planning of both administrations and airlines.

(vi) Addition of DME-T ground equipment to VOR stations where required will satisfy in a practical and economical manner the need for improved fixing ability and distance measuring when required from a ground based facility. DME-T installations will not be needed at all VOR locations, but only at those where ATC or other considerations will so demand. In many areas of the world there will be only a limited requirement for their implementation, whereas a complete change towards a new or additional system would dictate the world-wide implementation of new facilities.

3. Furthermore, IATA stresses above all the need for a *single standard* short distance navigation system. The introduction of a new system as an additional standard or recommended practice would discourage further implementation of planned VOR stations. The possibility of a choice between two—or ultimately more—systems would inevitably require the installation of both systems in aircraft flying in certain areas, leading not only to unnecessary expense but also to operational complications in the air and on the ground. The dilemma for States might be equally grave. They might be forced to choose between systems. In some cases, that choice might be influenced by the actions of neighboring States. Some Administrations might conceivably have to install both systems, with resultant penalties in both expense and the complication of air traffic control. Such a situation would prejudice the principle of international cooperation, as well as the harmonious and orderly development of international civil aviation.

4. Finally, IATA believes that a definite decision on a single standard short range navigational system is vitally necessary. Failure of the ICAO COM/OPS/RAC Meeting to arrive at a specific standard would, for obvious reasons, have consequences equally as grave as any which would arrive from the adoption of a dual standard.

AGREEMENT OF FOUR EUROPEAN AIRLINES TO FORM AIRUNION

Air France, Lufthansa, Sabena and Alitalia formed a new venture under the name of AIRUNION May 27, 1959. KLM dropped out only a few weeks before the conclusion of these negotiations.

Under the terms of the agreement between the airlines, AIRUNION will have its head offices in Paris, France, and will operate through four permanent committees charged with working out common policies in the following fields:

1. Programs. That is to say the development and expansion of the companies will be co-ordinated.
2. Technique and material. This may result in the use of fewer types of aircraft and probably the pooling of maintenance facilities.
3. Commercial agreements. This has to do with all the business conducted by the airlines except their sales to passengers.
4. Sales. The main feature here is that the four airlines will amalgamate their sales offices all over the world.

The purpose of the agreement is economy and better service. The agreement does not cover what is known as "cabotage"—that is to say, flights inside each country or flights between the home country and its overseas territories. It refers only to international flights. These flights make the agreement desirable so that a better spaced service may be offered particularly on trans-Atlantic flights.

For the time being each air line will receive payment from the common income, after deduction of common expenses, on the basis of the amount of traffic it has actually carried. But when the total traffic reaches five times the 1958 total of the four air lines or 2,445,000,000 ton-kilometers a year, then the income will automatically be divided on the basis of 34 per cent to Air France, 30 per cent to Lufthansa, 10 per cent to Sabena and 25 per cent to Alitalia.

TWELFTH TECHNICAL CONFERENCE, HELD IN BERKELEY, CALIFORNIA, MAY 4th TO 15th, 1959

The record of jet operations to date was subjected to exhaustive discussion and analysis in the Twelfth Technical Conference of the International Air Transport Association at Berkeley, California.

S. B. Kauffman, Pan American World Airways, who was Chairman of the Conference, reported that airlines already flying jets exchanged data on their experience and made their accumulated know-how available to other companies without restriction or thought to competitive advantage.

In this initial stage, the efficiency and competence with which any one company introduces jet aircraft may have a serious impact on the industry as a whole.

Airline discussions of jet problems, in conjunction with manufacturers, governments, air forces and others, began in the Technical Conference in 1950. This year's Symposium on Jet Operating Experience of IATA member airlines went exhaustively into the record of the first eight months of scheduled jet flying on a large scale. They were conducted under two headings of Flight Operations and Ground Handling; and at the close of the Symposium, the subject of training was further examined in a special session with test pilots of a number of the principal jet aircraft manufacturers.

Following the symposium, the Conference reviewed the general body of airline technical policy as expressed through IATA in the light of actual jet experience and, crystallized and put into concise language all of the forward planning and thinking we have done to produce the type of guidance material which will help the industry get the most productivity out of these new aircraft.

Highlights of the policy review were the following:

Vertical separation: The Conference recommended that civil jet aircraft should immediately be equipped with the more advanced Type II and Type

III altimeters, and that these should be mandatory for all civil aircraft no later than 1965.

The Conference found that a 1,000 foot certical separation can safely be employed for air traffic up to 50,000 feet if the more advanced types of altimeters are used in all aircraft; and felt that in view of the increasing amount of traffic expected at the high jet altitudes it is essential that no airspace be lost in compensating for lack of accuracy in measuring devices.

Dimensional units: The Conference considered that the time is now ripe to take further steps toward worldwide standardization of dimensional units as established by the International Civil Aviation Organization.

The ultimate objective of the "ICAO Table of Dimensional Units" is the use of the metric system for all dimensions except navigational distances and speed, which are expressed in nautical miles and knots. However, some governments are still using the so-called "Blue Table" which deviates considerably from the desired ICAO standard.

The IATA Conference developed a new temporary table, which differs from the ICAO objective only in respect of vertical distances, for which measurement in feet is accepted. This will be proposed to ICAO as a replacement for the Blue Table.

Visual glide path indicators: Asserting that there is an urgent need for better visual glide path information for pilots on landing approaches at runways not equipped with ILS, the Conference urged a full evaluation of visual glide path indicators as soon as practicable as a necessary step toward the setting up of an international standard requirement.

These indicators, installed on the ground, provide the pilot with visual references by which he can gauge whether he is on, above or below his proper glide path. Experimental systems have been under development in Australia, the United Kingdom and the United States.

Fuel and oil reserves: On the basis of practical operating experience with jets, the Conference concluded that determination of fuel and oil requirements for jet flight is a function of the operator as a part of his responsibility for operational control. It therefore opposed any global international regulation of the subject by ICAO.

It was pointed out that reserves must be calculated on the basis of many factors, each of which vary greatly according to the peculiarities of each route, and that these can best be assessed by the carrier at the time of actual flight planning. The Conference concluded that this procedure would be far more reliable than the use of any single global formula.

Secondary radar: Already on record as strongly in favor of ground radar for monitoring and marshalling air traffic in areas of high traffic density or multiple converging routes, the Conference asked for study within IATA of the development of secondary radar. This system, using airborne transponders, not only permits the identification of individual aircraft on the radar screen, but also improves the range and efficiency of ground radar installations.

Symposium Discussions

The Flight Operations group, in the course of symposium discussions, outlined methods of accelerating and simplifying flight planning, reviewed the special meteorological requirements of the jets, and advised the airlines of the relative importance of current forecasts of winds and temperatures at high altitudes and the degree of confidence which can be placed in them.

Analysis of flight experience to date makes it apparent that many of the special requirements for the jets stem from the anticipated limitations of air traffic control systems. The subject was therefore explored thoroughly and airlines were given an indication of the extent to which the existing

systems are capable of handling jets as well as of the future need in this respect.

The Ground Handling Group centered its discussions around ground handling and line maintenance, and covered ground support equipment as well as handling techniques and procedures for this equipment and for passengers, baggage, cargo and the aircraft themselves.

Line maintenance discussions touched on various aspects of maintenance procedures and problems, including the difficulties experienced with powerplants, structures and systems and with questions of personnel protection and technical training.

Under this heading, it was found that ingestion of foreign objects by jet engines while running up, has not presented to date as great a problem as had been expected. The Conference found that with proper training, the present-day airline pilot of average ability should have no difficulty in converting from piston-engined to jet aircraft, but it considered that he must be given an unusually thorough indoctrination, ground and flight training designed to emphasize the need to respect the aircraft and its characteristics at all times.

It was pointed out that in the course of their careers to date, pilots have been trained to a series of aircraft whose speeds increased in steps of about 50 knots and whose weights have increased about 40,000 lbs. from one type to another. With the jets, however, they are being brought into aircraft whose speed and weight are almost twice that of the largest they have ever handled before.

Airlines were especially advised to put their flight instructors through a more than usually rigorous training, and schedule all conversion training with a minimum of interruptions. It was also pointed out that conversion training time to jets can probably be reduced by as much as five hours per pilot, or approximately one quarter of the time which would otherwise be required, if training is continuous and simulators are used. Since jet flight training is estimated to cost approximately $2,000 per hour, the point was felt to be particularly important.

Companies which have yet to receive delivery of their jets were also counselled that they can make significant savings if they start planning introduction of the equipment well in advance in order to co-ordinate the activities of all of the internal departments concerned to avoid duplication of effort and ensure compatibility.

IV. RIO DE JANEIRO REGIONAL CIVIL AVIATION CONFERENCE

FINAL ACT OF THE CONFERENCIA REGIONAL DE AVIACAO CIVIL C. R. A. C.

The Aeronautical Authorities of Argentina, Brazil, Chile, Colombia, the United States of America, Ecuador, Peru and Uruguay, were invited by the Aeronautical Authorities of Brazil to participate in a Regional Civil Aviation Conference, which met in Rio de Janeiro during the period from January 19th to 26th, 1959.

Representatives of the commercial airlines and other organizations dealing with civil aviation attended the Conference, as Observers.

After the inauguration of the Conference by the Brazilian Minister of Aeronautics, Air Major Brigadier Francisco de Assis Correa de Mello, the Conference elected Air Brigadier Dario Cavalcanti de Azambuja (Brazil) as Chairman, Engineer Cesar Piacenza (Uruguay) as First Vice-Chairman, and Colonel Herman Medina (Colombia) as Second Vice-Chairman, being

appointed Secretary General, Dr. Aylzio Jose de Moura Alves de Souza, Delegate of Brazil. The Conference then approved the agenda which included the following:

(a) a study of the tariff situation and an examination of the causes of tariff imbalance in South America;

(b) a study of measures to correct the causes of tariff imbalance;

(c) regional and inter-continental air traffic;

(d) competition during the transition period of air transport involving the simultaneous use of conventional and jet aircraft;

(e) consultations and exchange of information between the Civil Aeronautical Authorities—American Civil Aviation Commission.

Two Committees were constituted for the study of the various items of the Agenda, viz.:

A Tariff Committee
A Legal-Economic Committee

Dr. Ovidio Perez Arguelles (Argentina) was elected Chairman of the Tariff Committee, and Dr. Rene Pairoa (Chile) as its Vice-Chairman, Engineer Jose Chrysantho Seabra Fagundes (Brazil) was elected its Rapporteur.

Dr. Vincente Gumucio (Chile) was elected Chairman of the Legal-Economic Committee; Dr. Miguel Antonio Vasco (Ecuador) Vice-Chairman and Dr. Victor Marchena (Peru) Rapporteur.

In its plenary sessions held on January 24th and 25th, the Conference examined the proposals of the Committees, and, after discussing them and amending some of them, approved the following recommendations, contained in the attached documents which form an integral part of the Final Act:

Recommendation No. 1: Concerning the adoption of general rules and procedures for the construction of tariffs;

Recommendation No. 2: concerning the expression of uniform basic tariff rates in standard currency;

Recommendation No. 3: concerning agents' commissions;

Recommendation No. 4: concerning measures for avoiding unauthorized changes in tariffs;

Recommendation No. 5: concerning the establishment of a tariff differential for jet aircraft;

Recommendation No. 6: concerning the study of operation with jet aircraft;

Recommendation No. 7: concerning the adoption of a uniform criterion for the utilization of regional traffic;

Recommendation No. 8: concerning the convocation of a Second Regional Civil Aviation Conference, and measures for co-ordinating the implementation of the recommendations of the Conference.

At the closing of the Plenary Sessions a Drafting Committee for the three languages was appointed, composed of:

Mr. Oswaldo Perez Arguelles (Argentina)—Chairman
Mr. Trajano Furtado Reis (Brazil)
Mr. Irving Roth (United States of America)

During the work of the Conference various documents were issued, some of which contain the statements of some delegations on various subjects under discussion.

And, in order to make this a matter of record, the Closing Plenary Session, held on January 26, 1959, approved this Final Act, which was signed by the Delegates present at this Session in three copies, in English, Spanish and Portuguese, which shall remain deposited in the files of the Directorate

of Civil Aeronautics of the Ministry of Aeronautics of Brazil, together with the documents issued during the Conference.

RECOMMENDATION No. 1

GENERAL RULES AND PROCEDURES TO GOVERN TARIFF CONSTRUCTION

The Regional Civil Aviation Conference

RECOMMENDS that:

1—equal tariffs, fares, rates and conditions of carriage be applied to comparable services;

2—the following be observed by all 60 participating carriers:

(a) the present tariffs and their respective regulations shall be maintained in force until April 1, 1959;

(b) the participating carriers, duly authorized by the respective Aeronautical Authorities, when necessary, shall meet on March 16, 1959 in order to determine tariffs (fares, rates and rules) and conditions of carriage which, after approval by the governments in accordance with their respective legislation, shall become effective in lieu of those mentioned in Item (a);

(c) the meeting referred to in Item (b) shall determine the excursion fares for travel from South America to North America, in both directions and from South America to Panama and to Cuba, in both directions which may be deemed necessary, equivalent to a minimum of seventy percent (70%) of twice the one-way fares, to become effective April 1, 1959, without prejudice to the introduction of other excursion fares on the American Continent.

(d) the decisions referred to in the Items (b) and (c) shall be unanimously adopted by the carriers. Nevertheless, if unanimity is not attained, the Governments shall, in accordance with their respective legislation, establish the tariffs to be applied by the carriers;

3—the measures adopted in keeping with these recommendations be applied simultaneously with the adoption of the free market rate of exchange;

4—the tariffs to become effective on April 1, 1959, be applied, for the period of one year, with a differential not to exceed ten percent (10%) for services of carriers considered by the respective governments as "underdeveloped." This differential shall be eliminated or reduced whenever there is a change in the classification or development of any carriers, and the principle of Item 1 shall come into effect in such case.

EXPLANATIONS:

It is understood that, as regards the application of excursion tariffs:

(a) the Recommendations of the Conference refer to the American Continent;

(b) on excursion trips, the number of stopovers shall be unrestricted for round trips only.

RECOMMENDATION No. 2

STANDARD CURRENCY AND EXCHANGE

The Conference

RECOMMENDS that:

1—For the adoption of tariffs, the Aeronautical Authorities take as a basic values in standard currency;

2—Only the free market exchange rate be applied in the conversion of these basis tariffs into the currency of each country;

3—While the existing conditions of the international monetary market pre-

vail, the U.S. dollar be the standard currency adopted for tariff construction.

RECOMMENDATION No. 3

AGENTS' COMMISSIONS

The Conference
RECOMMENDS that:

1—The Carriers pay to sales agents and general agents, directly or indirectly, percentages of commission not to exceed the following:

Passengers

(a) seven percent (7%) to travel agents, except as provided for in (b) and (c);
(b) an additional three percent (3%) for sales made by general agents;
(c) an additional three percent (3%) to travel agents for organization and advertisement of "all expense" tours.

Cargo

(a) five percent (5%) to cargo agents;
(b) an additional 2½% for sales by general agents;

2—The percentages of commission to intermediaries, if there be such, be included in the percentages indicated in Item 1, which in no case may be exceeded.

RECOMMENDATION No. 4

MEASURES FOR AVOIDING UNAUTHORIZED TARIFF CHANGES

The Conference
RECOMMENDS that:

1—The Aeronautical Authorities take all the necessary measures to avoid any unauthorized changes in tariffs;

2—These measures should apply to those persons participating in sales, whether directly or indirectly.

RECOMMENDATION No. 5

CREATION OF DIFFERENTIAL IN TARIFFS FOR JET AIRCRAFT

The Conference
RECOMMENDS that:

1—With the introduction of jet aircraft on the routes operated by conventional aircraft (piston and turbo-props), the following factors must be considered:

(a) larger capacity;
(b) greater speed;
(c) greater range;
(d) greater comfort.

2—These factors being considered, it is necessary to establish a differential to increase the tariffs applicable to jet aircraft as related to first class and tourist class tariffs for conventional aircraft, unless the capacity and range of the jet aircraft make unnecessary such differential.

RECOMMENDATION No. 6

OPERATIONS WITH JET AIRCRAFT

The Conference
RECOMMENDS that:

The Countries participating in this Conference observe closely the operation of jet aircraft and their effect on the airlines operating with conventional aircraft.

RECOMMENDATION No. 7

A CRITERION FOR THE UTILIZATION OF REGIONAL TRAFFIC

The Conference
RECOMMENDS that:

1—The South American Governments participating in this Conference adopt a uniform criterion for the utilization of regional traffic;

2—This criterion be, provisionally, the assignment at least 75% of the regional traffic to the carriers of the two States interested therein, the following bases being taken into consideration:

(a) each of these two States shall have half of this percentage for its own carriers;

(b) in case the traffic volume of the carriers of one State does not attain the percentage of 50% referred to in Item (a), the carriers of the other State shall have preference to increase their respective traffic volume until the carriers of that State attain 75% of the traffic;

(c) the traffic volume of carriers of third States in regional traffic shall not exceed, in total, 25% of this regional traffic, except when the traffic volume of the regional carriers does not attain the index of 75%;

(d) the adjustment of the participation of carriers of third States to this remaining traffic shall be made gradually.

3—The quotas corresponding to the application of the percentages referred to in this Recommendation be calculated, for each year, on the basis of the average traffic volume for the previous two years;

4—For the purpose of this Recommendation, regional traffic be that traffic embarked within the territory by a State and destined for the territory of a bordering State;

5—For the adoption of the criterion herein recommended, the Aeronautical Authorities of the South American States participating in this Conference take the necessary measures for its implementation in conformity with their respective legislation and with the bilateral agreements to which they may be parties.

RECOMMENDATION No. 8

CONVOCATION OF THE SECOND REGIONAL CIVIL AVIATION CONFERENCE AND IMPLEMENTATION OF THE RECOMMENDATIONS OF THE FIRST CONFERENCE

The Conference
RECOMMENDS that:

1—The Second Regional Civil Aviation Conference be held in the Argentina Republic next year, and that consequently the National Director of Civil Aeronautical of Argentina be requested to convoke that Conference at a time deemed opportune by him after consulting the Aeronautical Authorities of the other States;

2—The National Director of Civil Aeronautics of Argentina remain in continuous contact with the Aeronautical Authorities of the other States in order to coordinate information and communications concerning the implementation of the RECOMMENDATIONS of the First Regional Civil Aviation Conference, and convoke whenever necessary, special meetings after consulting the Aeronautical Authorities of the other States.

V. INTERNATIONAL FEDERATION OF AIRLINE PILOTS ASSOCIATIONS (IFALPA)

REPORT OF THE FOURTEENTH ANNUAL CONFERENCE

The Fourteenth Annual Conference, held at Helsinki, 1-18 March 1959, discussed a wide range of subjects bearing on the work of ICAO including the results of meetings held during the past year and their bearing on IFALPA policies, and the preparation of briefs and development of new policies for meetings in the coming year.

Of particular interest was the Federation's endorsement of its policy regarding short range navigation aids emphasizing the requirement for pictorial display in the cockpit. The Conference also unanimously approved its policy on flight and duty time limitations and agreed to submit to ICAO, as agreed in the Working Group of the Air Navigation Commission, a comprehensive paper on this problem with suggestions for amendments to Annex 6.

VI. INTERNATIONAL CRIMINAL POLICE ORGANIZATION

NOTE ON THE COOPERATION OF THE POLICE AUTHORITIES WITHIN THE ORGANIZATION[2]

The aims of the ICPO (Article 2 of the Statutes) are:

(a) to ensure and develop the widest reciprocal assistance among all criminal police authorities, within the framework of national laws and in the spirit of the Universal Declaration of Human Rights;

(b) to establish and develop all services capable of making an effective contribution to the prevention and repression of ordinary crimes and delicts.

1. The cooperation among the police authorities within the ICPO has no limit other than that established by Article 3 of the Statutes of the ICPO, viz. "any activity or intervention by the Organization in questions or matters of a political, military, religious or racial nature is strictly forbidden."

2. By the end of 1958, sixty-two countries were affiliated with the ICPO: Argentina, Australia, Austria, Belgium, Brazil Burma, Cambodia, Canada, Ceylon, Chile, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ethiopia, Finland, France, Federal Republic of Germany, Ghana, Greece, Guatemala, Haiti, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Jordan, Laos, Lebanon, Liberia, Libya, Luxembourg, Mexico, Monaco, Morocco, Netherlands, Netherlands Antilles, New Zealand, Norway, Pakistan, Panama, Philippines, Portugal, Saudi Arabia, Spain, Sudan, Surinam, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Kingdom, United States of America, United Arab Republic, Uruguay, Venezuela, Yugoslavia.

3. In each affiliated country, one office (normally a central police office), designated by the government, ensures all international police liaison directly, i.e., outside diplomatic channels.

This office is called the National Central Office.

The activities of all National Central Offices are coordinated by the General Secretariat of the ICPO in Paris.

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[2] The Secretary General of ICPO sent the above communication to the Secretariat of ICAO in a letter dated 30 December 1958.

4. Liaison among National Central Offices is ensured *inter alia*, by a radio-electric network of the ICPO. This network is rapidly growing. At the end of 1958, it had twenty-one stations, namely, the Central Station in Paris and national stations in Ankara, Brussels, Buenos Aires, Copenhagen, Helsinki, Lisbon, London, Luxembourg, Madrid, Oslo, Rabat, Rio de Janeiro, Rome, Stockholm, Tel Aviv, Tunis, Utrecht, Vienna, Wiesbaden and Zurich.
5. Within the framework of the ICPO, the police authorities of each affiliated country can establish contact with one another through the National Central Offices and thus request any information, documents, investigation, hearings, seizures, surveillance, arrest, etc. permissible under the national laws concerned.

   Special international broadcasts sent by the General Secretariat of the ICPO in Paris, make it possible to search for, and to arrest, any offender in any of the affiliated countries.
6. Files and fingerprints of international itinerant offenders are centralized in the General Secretariat of the ICPO in Paris, which also receives copies of all correspondence among National Central Offices. This documentation is at the disposal of the National Central Offices.
7. The General Secretariat of the ICPO in Paris is also an international research center for both practical and theoretical studies; it applies the basic ideas of the Organization and ensures liaison with all the great international organizations (UN, WHO, UNESCO, UPU, ILO, etc.).
8. As regards public international law, the work of the ICPO has been recognized by:
   (a) the International Convention on the Suppression of Counterfeiting Currency of 20 April 1929 (Recommendation IX);
   (b) the Economic and Social Council of the United Nations (Division of Narcotics) Recommendations of 1954, 1955, 1956, 1957 and 1958.
   (c) The Council of Europe—European Convention on Mutual Assistance in Judicial Matters of 11 October 1958.

Example of Intervention of ICPO

On board an aircraft registered in country A, a national of a country B commits an offense during the journey from country C to country D.

On the landing in D, the National Central Office of D, having been notified by the aerodrome police, notifies the National Central Offices of countries A, B, C, seeks their cooperation and puts in motion the whole procedure in country D for judgment or extradition of the offender.

RECENT ADDRESS

CIVIL AVIATION IN TRANSITION TOWARDS ECONOMIC SELF-SUFFICIENCY[1]

Statement by MR. L. H. SLOTEMAKER (Netherlands)
Executive Vice-President, K.L.M. Head Office

SUMMARY

Large, fast jet aircraft will eventually make air travel cheaper and transport more passengers. At present the very heavy investments needed come largely from governmental sources, but the economic advantages offered by jets might make it possible to attract private investors.

A trend exists towards the elimination of wasteful competition between airlines: agreements have been reached between companies both in Europe and in the U.S. This can lead to more rational route patterns, higher load factors, and savings on sales organizations. This tendency has been started by the airlines themselves, not with the aim of setting up cartels, but to increase their service to the public by maximizing efficiency. In this way airline operation may be made a self-sufficient activity, and private investments in civil aviation be encouraged.

I was asked to make a short speech (of about ten minutes) on the financing of the new, very expensive jet planes.

But I have changed the title of my speech, because I rather prefer to try and place the subject in its true perspective, which is, in my opinion, that civil aviation is now in transition from a subsidized and government-controlled industry towards greater economic self-sufficiency, making it much more attractive for private investors. However, the change of title will not make my speech any longer. And I will now try to explain why we can regard the air transport industry as being in a state of transition.

First of all, there is the switch-over from piston-powered aircraft to the much faster and larger jet planes. These planes, for various reasons, can be expected to operate more economically: they will be able to fly more hours a year for a greater number of years. It is significant that U.S. commercial banks, in a number of loan agreements for the financing of jets, have sanctioned a 10-year maximum amortization period (as against 5 to 7 years for piston-engined planes).

With longer amortization periods and lower operating costs the cost per ton/mile promises to be quite a bit lower than before.

The larger jet planes will also provide the way to cheaper mass transportation. It is true that since April 1st of this year a small surcharge on jet fares has been introduced, but this surcharge, rather than affect the traffic (jets are now the great attraction to the traveling public), will create additional revenues for the carriers concerned and thus will help meet initial costs. This surcharge in my opinion should therefore be regarded as only temporary.

I think that as soon as more precise facts are known about the costs of jet operations and jets have become a common feature in air transportation —i.e. after a certain transition period—the surcharge will not only disap-

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[1] Presented at the XVIIth Congress of the International Chamber of Commerce in Washington, D. C., April 24, 1959.

pear but a general decrease of fares will follow, and this decrease will be a stimulant to an unprecedented growth of traffic.

However—and now I come to the problem of finance in this completely new era, the jet age—enormous investments are necessary, not merely with regard to the purchase of these jet planes but ground equipment and new workshops are also required. Then pilots and other personnel will have to be trained in the new techniques of operating and maintaining the jet planes.

Investment requirements for the U.S. airline industry are estimated at over $3 billion, of which about $2.5 billion is for flight equipment. For the non-U.S. carriers I estimate this amount at another $1 billion, of which $750 million is for European airlines.

To the degree this money does not come from sources as depreciation, retained earnings and sale of surplus equipment, it has to come either from governments or from private investors.

Government investment means governmental control of an industry which—like shipping—should be run on a basis of private enterprise, as already pointed out by M. Georges-Picot in his introductory statement and we should not forget that these same Governments, during the present transition period, are faced with enormous investments in the infrastructure to make jet operations possible: much longer runways are needed, new approach systems have to be developed, and bigger terminal buildings must be erected. To some extent the aviation industry as a whole is already paying directly or indirectly for ground and air navigation facilities out of its present very meager profits—if any. And because their profit margin is so small, the airlines cannot be expected to make a sizable further contribution for the time being.

Coming back to equipment financing, what about the private investors? They will be interested only if the industry is run on a sound commercial basis, paying its own way and promising a reasonable profit.

With but few exceptions the international air transport industry has not yet reached that stage. Civil aviation, generally speaking, is still a government affair: in many cases there are government subsidies, government ownership or participation, government protection and government control.

The economic advantages of jet operations, however, might alter the picture as far as subsidies and therefore government control is concerned—after a transition period, of course. Costs are likely to decrease, while revenue can be stimulated by opening up new sources of traffic, attracted by lower rates and fares. Here I am not only thinking of the fare level for jets. It is reasonable to expect a rate-differential for piston-engined aircraft; this means still lower fares for this type of plane providing a new incentive to a modern feature: the inclusive tours, for which a considerable market is opening up. This is one reason why one need not fear too much that the introduction of jets will result in an over-capacity.

And there is still a further most promising possibility to make civil aviation a self-supporting industry, namely by eliminating wasteful competition. This could be achieved in the foreseeable future by the airlines through their joint efforts. And here we come to still another field where civil aviation is in transition.

Some forms of cooperation already exist. One has only to think of the well known Scandinavian Airlines Consortium. Further, in October last year an agreement was signed between SAS and Swissair, both of which face many similar problems such as their re-equipment programs, maintenance organizations, etc. The basis of the agreement is the conviction shared by the two carriers that their investments can be reduced and operational economy improved by a co-ordinated equipment policy and joint utilization of workshops and technical and operational organizations.

Another interesting agreement has been made between Pan American Airways and National Airlines. The latter is unique involving as it does exchanges of stock and equipment leasing. One advantage of this agreement is that National can reduce its equipment bill. The leasing, furthermore, helps NAL in the Florida winter season and PanAm in the transatlantic summer peak.

Other plans for even more far-reaching cooperation are now being studied, such as combinations between European airlines.

The airlines are thus turning away from their Governments towards mutual cooperation and consequently to a system of free enterprises flying on their own power. And it is interesting to note that here the individual airlines are taking the initiative; it is not a government venture.

Admittedly the difficulties of establishing such forms of cooperation are enormous, but the advantages to be realized are even greater. To understand this, one has only to look at the present situation in Europe.

The European network of air services is not primarily adapted to the needs of the intra-European traveler, but is rather a feeder system for the many and geographically divided intercontinental operations. The route-map of Europe reveals the existing route pattern as a series of big cities with routes radiating from them ("hubs and spokes"). This is a consequence of nationalism—each carrier concentrating its efforts on its own main cities. Any combine, on the other hand, would make possible common network adequately adapted to the needs of the public, with flights properly spread over the day or week and without duplications, but with more connections and with higher frequencies. All this would increase load factors and thus revenues.

As far as the expenditure side is concerned, the scope here is immense: with a close cooperation between carriers we will see an increased annual utilization of aircraft, combined and therefore more efficient maintenance and overhaul units, combined purchases and cost-saving standardization. Also a joint sales organization will bring considerable savings. Just walk along Fifth Avenue in New York and notice the expensive separate sales offices of I do not know how many airlines, mostly offering the same possibilities and facilities for the same price.

At this point I think it is good to say that the idea underlying such cooperation is not at all the formation of huge international cartels. The main purpose is cooperating to lower costs and to improve services to the ultimate consumer, the passenger and the sender of freight.

The advantages of eliminating wasteful competition by way of combined efforts are so crystal clear that Governments can hardly refuse to let their carriers join forces with airlines of other nations. Actually the intergovernmental European Civil Aviation Conference has already formulated recommendations to that effect and with great foresight the International Chamber of Commerce has advocated such a course in a number of resolutions.

A certain degree of voluntary coordination of airline operations, not by the Governments, but by the airlines themselves, combined with the promising economic advantages of jet operation, may therefore—after a certain transition period—lead to a self-supporting industry. Thus civil aviation will become of increasing interest to the private investor.

DIGEST OF RECENT CASES

AIRPORTS — FLYING SERVICES — ADJOINING PROPERTY OWNER — LOW FLIGHTS — NUISANCE

Scott v. Dudley

6 CCH Aviation Law Rep. 17,107 (Ga. Nov. 7, 1958)

Unpaved runway of defendant's airport which was used as a training field for pilots, terminated 150 feet from the plaintiff's private school for children with deficient speech and hearing. Plaintiff sued to permanently enjoin the defendant, his servants, agents and employees, from flying planes over the school at altitudes which interfere with the efficient operation of the school. The court allowed equitable relief of this type within certain prescribed altitudes, and did not bar such relief under the statute of limitations as the activity here was a continuing nuisance with a new cause of action arising every time a flight is made.

FLIGHT ENGINEERS — SENIORITY RIGHTS FOLLOWING MILITARY SERVICE — UNIVERSAL MILITARY AND TRAINING ACT

McIver v. United Air Lines

6 CCH Aviation L. Rep. 17,265 (S.D. N.Y. Jan. 26, 1959)

Plaintiff was a flight engineer employed by the defendant airlines at the time of his induction into military service, and upon his return in 1953, was restored to the same position. He now seeks to establish, by way of summary judgment, retroactive seniority rights in order to fill a co-pilot vacancy. The court denied the motion holding that under the Universal Military Training and Service Act, a returning veteran is not entitled to automatic progression where the position to be held depends upon an exercise of discretion on the part of his employer. However, plaintiff was allowed to amend his complaint so that he might establish, if he could, the existence of a custom or practice on the part of the employer to grant seniority automatically.

CONDEMNATION — AIRSPACE EASEMENTS — JET PLANES — NAVIGABLE AIRSPACE

Matson v. United States

6 CCH Aviation Law Rep. 17,310 (Court of Claims March 4, 1959)

Plaintiff sued to recover compensation for the taking of his property by the United States through its use of the property's navigable airspace. The court held that although the Federal Aviation Act of 1958 changed the definition of "navigable airspace" to include airspace needed to insure safety in landing and take-off, obviously in contemplation of a more extensive use of jet aircraft; the act did not change the rule that continuous invasions of airspace at low altitudes constitute an invasion of the land for which the property owner should be reimbursed.

AIR CARRIER TARIFFS — LIMITATION OF LIABILITY — LOSS OF PASSENGER'S FUR COAT

Mustard v. Eastern Air Lines, Inc.

6 CCH Aviation L. Rep. 17,323 (Mass. March 9, 1959)

Plaintiff passenger, who lost her fur coat which she carried upon defendant's airliner, claimed that the tariff provision which limits an air carrier's liability for loss of a passenger's personal property unless a higher valuation is requested and paid for, applies not only to articles turned over to the custody of the carrier, but also to articles retained in the passenger's custody. The court firstly sustained the validity of such loss liability provisions, and secondly, found such provisions to encompass all property offered for transportation, whether it is to be weighed or not.

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